

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

STATE OF OREGON,)
)
Plaintiff,) Washington County
) Circuit Court
v.) No. 16CR46339
)
BENJAMIN JAY BARBER,) CA A163786
)
Defendant.) **Volume 3 of 5**

TRANSCRIPT OF PROCEEDINGS ON APPEAL

BE IT REMEMBERED that the above-entitled
Court and cause came on regularly for hearing before
the Honorable Beth L. Roberts, on Wednesday, the 9th
day of November, 2016, at the Washington County
Courthouse, Courtroom No. 304C, Hillsboro, Oregon.

APPEARANCES

Marie Atwood, Deputy District Attorney,
Appearing on behalf of the State;

Cameron Taylor, Attorney at Law,
Christine Helregel, Certified Law Student,
Appearing on behalf of Defendant Barber.

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Proceedings recorded by digital audio recording;
transcript provided by Certified Shorthand Reporter.

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1 (Volume 3, Wednesday, November 9, 2016, 9:00 a.m.)

2 P R O C E E D I N G S

3 (Whereupon, the following proceedings
4 were held in open court:)

5 THE COURT: Thank you. Please be
6 seated.

7 Good morning. We're here today for the
8 case of State of Oregon versus Benjamin J. Barber.
9 This is 16CR46339. Mr. Barber is present. He is out
10 of custody with his attorney, Mr. Taylor. Ms. Atwood
11 is here on behalf of the State.

12 And, Mr. Taylor.

13 MR. TAYLOR: Judge, I was just going
14 to -- as you list the attorneys, Ms. Helregel, our
15 certified law student will also be joining us as
16 co-counsel. She's wrapping up some business in front
17 of Judge Simms.

18 THE COURT: Okay. And, I'm sorry, her
19 name is?

20 MR. TAYLOR: Christina Helregel. I can
21 try to spell her last name for you, H-e-l-r-e-g-e-l.

22 THE COURT: Helregel?

23 MR. TAYLOR: Helregel, yes, Judge.

24 THE COURT: Christina?

25 MR. TAYLOR: Yes, Judge.

1 THE COURT: Okay. Thank you.

2 All right. And so I understand that
3 there's some preliminary motions; is that correct?

4 MS. ATWOOD: Yes, Judge.

5 THE COURT: All right. And, Ms. --
6 whose are they?

7 MS. ATWOOD: Well, I -- I kind of want
8 to bring something up before we get started with the
9 motions in limine.

10 I was notified yesterday that this
11 defendant has elected to file a lawsuit against me in
12 federal court. He came by the office yesterday and
13 also handed me a motion that was apparently filed
14 here in circuit court requesting a number of things.

15 Let's see here. It's a motion to
16 acquit, notice of removal to federal court to track
17 with the pending lawsuit. It's my understanding he's
18 seeking a temporary restraining order against me and
19 has also sued the victim and her attorney.

20 And in just glancing through the
21 paperwork that I've received so far, some of what he
22 discusses in his filings -- which appear to be pro se
23 at this point -- but I know that he has filed for an
24 attorney to represent him on those matters as well.

25 Some of what he indicates has to do with

1 our case and proceeding with our case. He states in
2 his motions that he does not feel that his attorney
3 is representing him the way that he wants to be
4 represented and that this proceeding cannot move
5 forward in any way until the resolution of his
6 pending federal action.

7 So I just wanted to notify the Court of
8 all of those sort of related but extraneous matters.
9 I was, basically, advised just to ask you how you
10 would prefer to proceed. The victim is here today,
11 but she has not yet been served anything in terms of
12 her role in the federal case as a defendant.

13 She is still currently down in the
14 basement of the other building 'cause she was afraid
15 to come up here for fear that he would personally try
16 to serve her and potentially cause a violation of his
17 release conditions. So there's kind of a lot going
18 on there.

19 But I just wanted to bring that to our
20 attention before we proceed with any substantive
21 issues.

22 THE COURT: Okay. And I don't find that
23 to be compelling in any way towards proceeding today.

24 MS. ATWOOD: Okay.

25 THE COURT: Mr. Taylor.

1 MR. TAYLOR: We're prepared to proceed
2 today, Judge. If Your Honor's not interested in that
3 matter, we won't discuss it any further.

4 THE COURT: Okay.

5 MR. TAYLOR: The one thing I did want to
6 put on the record before I forget is that in this
7 case, a demurrer that I filed, a First Amendment
8 demurrer, was heard by Judge Butterfield previously.
9 The last time we were all in court together, he took
10 the issue under advisement.

11 He subsequently issued a just order
12 denying that demurrer. But as a matter of preserving
13 my record, I'd like to put on the record now that we
14 do take exception to Judge Butterfield's ruling on
15 that matter. And I just want to make sure that issue
16 is properly preserved for the Appellate Courts.

17 THE COURT: And at any point in time,
18 did you contact Judge Butterfield's office in order
19 to get the matter in front of him so that you put it
20 on the appropriate record? 'Cause you're not giving
21 Judge Butterfield an opportunity to respond.

22 MR. TAYLOR: And, Judge, I -- I will
23 concede, I did not. I -- I believe that
24 Judge Butterfield sort of issued his final ruling and
25 that as this case progressed, simply the way to

1 preserve it was to put on the record next time we
2 were in court on the matter.

3 THE COURT: Okay. All right. What
4 else?

5 MS. ATWOOD: Do you want to start or
6 should I start?

7 MR. TAYLOR: I don't have a whole lot of
8 issues to bring up in limine, I guess. A couple
9 things I would want to note, I do intend to
10 cross-examine the State's complaining witness about
11 some statements she made with regard to a release
12 hearing we had in this case.

13 So as far as putting things on the
14 record for that, we would, obviously, waive any sort
15 of mistrial arguments or things like that related to,
16 obviously, the facts coming out that my client was
17 incarcerated for a time during this.

18 THE COURT: Thank you.

19 MR. TAYLOR: So aside from that, I don't
20 have a lot. The only other thing I want to talk
21 about is I would move to exclude -- and I guess,
22 Judge, to frame the issue, a brief sort of
23 encapsulation of what this case is all about.

24 So the victim in this case and my client
25 were previously married. They were married for -- in

1 2012, married for about a year, divorced. Long,
2 nasty divorce and then that ended up in about 2015
3 and then there was communications back and forth
4 between them throughout 2015 and 2016.

5 There was some discussion -- amongst all
6 this marriage and divorce, there is this sort of
7 loose allegation of a marital rape situation. And as
8 I understand the facts, are that while they were
9 married, the victim was consuming a number of
10 prescribed medications and mixing them with alcohol
11 to the point where she, at some points, became quite
12 intoxicated and had sex with my client, her husband
13 at the time.

14 Subsequent to them splitting up, she got
15 involved with some counseling and things like that.
16 And there was discussion there about how, obviously,
17 sex, when people are incapable of having -- of
18 consenting, can constitute rape. And so there were
19 some allegations back and forth of this rape issue.

20 They came up in this case when Deputy
21 Duenas, who's the main arresting officer in this
22 case, was arresting my client and sort of going
23 through, you know, what are all the reasons why you
24 were bent out of shape with your ex-wife?

25 And this issue of this possible marital

1 rape came up. I also have some documentation that's
2 in the evidence we have where they have -- my client
3 and the victim had a brief discussion where, you
4 know, the victim says, "To be clear, I don't think
5 you ever raped me or anything like that."

6 All that goes to say, I don't believe
7 that issue is critical at all to the State's case. I
8 don't think it is necessary for them to put on that
9 evidence. I think that an allegation like that is
10 obviously about as inflammatory as things can get.

11 As such, I'd be moving to exclude it
12 under 403 because I think that the State will have
13 plenty of things they can say about why my client
14 would be upset with Ms. Vance and angry at her
15 without getting into this issue of rape.

16 And I think -- given Ms. Vance's
17 statements on that matter, I don't think it is a
18 factual contention that she would even make herself.
19 So I don't believe that it is an appropriate thing to
20 have. I believe it's unduly prejudicial to my
21 client.

22 I think the probative value of it is so
23 extremely low that it is outweighed by the
24 prejudicial effect on my client.

25 THE COURT: Okay.

1 Ms. Atwood, how is it relevant?

2 MS. ATWOOD: So I guess I just want to
3 be clear as far as the evidence is concerned, I don't
4 intend to ask the victims any -- the victim any
5 questions about what happened during the course of
6 their marriage that may have constituted marital
7 rape.

8 However, the evidence, as it actually
9 pertains to this case is that when the defendant was
10 contacted by the officer, he was the one who said, "I
11 did this because she accused me of rape." So I think
12 that it is highly probative of his motive.

13 It's his basic admission to the police,
14 so I don't see any way that the -- the prejudice of
15 the statement when I'm not -- no one's proving or
16 disproving a rape allegation.

17 And, frankly, that's not what really
18 matters. What matters is that, from his perspective,
19 he had been accused and this was his retaliation.

20 THE COURT: Okay. And I -- it does seem
21 it's your client's statement and it goes to the
22 motive of him doing this action. I will allow it for
23 that purpose and simply find that it is relevant and
24 that it is more probative than prejudicial.

25 I don't -- I'm hearing from the State

1 that they don't intend to bring out the facts of
2 that; and is that correct?

3 MS. ATWOOD: That's correct.

4 THE COURT: And so I don't think, unless
5 you bring it out, that it would be relevant. And so
6 I won't allow that portion of it.

7 MR. TAYLOR: So, Judge, I -- I
8 understand that. However, I believe that if this
9 allegation does come out, I would want to
10 cross-examine upon the fact that this was just an
11 accusation and pursue that line of questioning.

12 MS. ATWOOD: But I don't see how he can
13 cross-examine the victim about it when she's not
14 going to be the one offering that testimony. It'll
15 be coming through Officer -- or Deputy Duenas just as
16 the statement.

17 THE COURT: And it's the defendant's
18 statement, so you can certainly inquire of your
19 client --

20 MS. ATWOOD: Yes.

21 THE COURT: -- but not of the -- of the
22 complaining witness.

23 MR. TAYLOR: I understand your ruling.
24 That's all I have for right now.

25 THE COURT: Okay.

1 And then, Ms. Atwood.

2 MS. ATWOOD: I have a number of things.

3 So I haven't -- the last time I got a chance to view
4 the defense evidence was quite some time ago. And we
5 had kind of intended to at least have, hopefully, a
6 few minutes to go through it again 'cause it stayed
7 at his office.

8 I wasn't provided a physical copy. But
9 I took some notes at that time about what the
10 evidence was and I have a number of objections. Most
11 of what the defense intends to offer, from what I can
12 tell, in their case today is hearsay, lacks
13 relevance.

14 And I can't find any other way that it
15 would be admissible. And -- and most of the evidence
16 that I think they might argue is relevant to bias, I
17 don't think falls under any exception that would
18 allow it.

19 So to summarize, there is a number of
20 mostly e-mails, Facebook chats, Google chats, things
21 like that that span the length of time from November
22 2010 to the summer of 2015. A lot of these records
23 don't have -- my -- the victim in the case is not a
24 participant in the conversation at all.

25 So they're records of conversations

1 between the defendant and other individuals. So in
2 that respect, I think for the defense to offer them,
3 they would be hearsay 'cause it's my understanding
4 that the defense does not intend to offer the other
5 individuals as witnesses or have them testify to
6 their conversations with the defendant.

7 And, namely, the conversations that have
8 occurred years and years ago -- 2010, 2011 is when
9 most of this information is from -- are far too
10 remote in time to be relevant in any way.

11 Just to give you an idea of what we're
12 talking about, in -- in November of 2010, there was
13 an e-mail from the defendant to an individual who is
14 only identified as Vin, responding to an
15 advertisement that this Vin individual had made. The
16 defendant responding tells Vin that he and his wife
17 want to make pornography.

18 The victim was never a party to that
19 conversation. And I don't believe that this could
20 even legally be offered as an adoptive statement by
21 the victim to cross-examine her on because, from my
22 understanding, the adopted statement, I guess, rule
23 applies only to statements of party opponents.

24 She's not a party opponent to the
25 defense in this case. But the -- most of the

1 conversations that I'm talking about are similar.
2 Conversations between the defendant and other
3 individuals, where he is soliciting -- soliciting sex
4 encounters and oftentimes including the victim in his
5 offers or requests to other individuals.

6 But she's not actually a part to these
7 conversations. This also includes some conversations
8 between the defendant and the victim during the midst
9 of their divorce, which was in 2013, for the most
10 part. There were, understandably so, a -- a lot of
11 fights, a lot of arguments, bickering about
12 paperwork, legal issues.

13 But none of those conversations, from
14 what I can tell, have anything to do with the
15 dissemination of intimate images by the defendant of
16 the victim. So I don't believe that they're relevant
17 in any way to the case at hand.

18 I -- even if the defense intended to
19 offer them as proof of bias, I think that, at most,
20 what they could do is ask the victim, you know, "Did
21 you have a -- kind of a hostile, rocky divorce with
22 the defendant? Did you guys argue about things such
23 as X, Y and Z?"

24 And unless she denies somehow having
25 similar arguments with the defendant, they -- they

1 can't use these as exhibits or offer them against
2 her. To, I guess, wrap up arguments on those
3 issues -- let's see.

4 Oh, the other route I could foresee
5 the defense attempting to take when offering these
6 statements or exhibits as actual exhibits is the
7 prior consistent statement exception in the event
8 that the defendant testifies.

9 However, the State does not plan to
10 cross-examine the defendant or argue that he never
11 made these statements. And my understanding of the
12 prior consistent statement exception is that the
13 state -- a statement itself has to be challenged
14 initially to offer the prior consistent statement
15 in -- in support of it.

16 And what I wrote down, specifically,
17 from Kirkpatrick is that an implied charge of
18 fabrication is not created merely where the testimony
19 of a witness is impeached by contradictory evidence.

20 So even where the defendant's testimony
21 might be contradictory to what the State has put on,
22 that does not, in and of itself, create an implied
23 charge of fabrication such that they can offer all of
24 this, you know, four, five, six-year-old
25 documentation of irrelevant conversations to support

1 his testimony.

2 THE COURT: Okay. So there's two
3 separate e-mails theory -- themes. One --

4 MS. ATWOOD: Yes. The --

5 THE COURT: -- is the theme of --

6 MS. ATWOOD: -- well, that's mostly the
7 categories of the e-mails. There are e-mails from
8 him to others involving sexual encounters, requests,
9 solicitations and e-mails between him and the victim
10 involving matters of their divorce is kind of the
11 general categories I could see in the defense.

12 THE COURT: Okay.

13 Mr. Taylor?

14 MS. ATWOOD: (Indiscernible).

15 MR. TAYLOR: Judge, thank you. And
16 before I -- obviously, relevance is a big issue of
17 what Ms. Atwood is saying, so if I can sketch out a
18 few more parts of the factual scenario for
19 Your Honor.

20 So these guys met in, like, 2009,
21 they -- online. They quickly get into a romantic
22 relationship. And a substantial part of their
23 romantic relationship is that they are into their
24 very sexually adventurous lifestyle.

25 So they are having sex in public places,

1 going to sex clubs. They are soliciting other people
2 to have threesomes and foursomes with. They are
3 making this -- these videos that are the subject of
4 this case. They're making voluminous amounts of
5 photographs and things like that.

6 They are exchanging these videos and
7 photographs with these other couples they're talking
8 to that they've met in the Internet. And in the
9 final note, they are -- my client, on behalf of them
10 as a couple, contacts some pornographers who are
11 making porn and expresses their mutual interest in
12 creating pornography.

13 And all of this is extremely relevant to
14 this case because, when you look at this crime,
15 there's elements to the crime that talk about -- and
16 just to make sure I get it perfectly right -- the
17 defendant knows or reasonably should have known that
18 the person does not consent to the disclosure.

19 Again, intends to harass, humiliate or
20 injure is a big part of it and then questions about
21 whether the alleged victim is, in fact, harassed,
22 humiliated or injured by the disclosure and whether a
23 reasonable person would be so harassed, humiliated or
24 injured.

25 So a lot of this stuff, the -- the stuff

1 from back in 2010, 2011 -- which is when these videos
2 at issue in this case are made -- goes to the fact
3 that -- because Mr. Barber's understanding of the
4 situation is critical to the elements of this crime.

5 And if they are involved -- he and
6 Ms. Vance -- involved in this very expansive, sort of
7 sexually-progressive thing where they are doing all
8 these things in view of other people, they are
9 sharing all of this stuff with other people, it is
10 certainly a question for the jury as to whether she
11 can then later claim that, one, she did have
12 expectations of privacy.

13 And, two, Ms. Atwood would have to argue
14 that despite all this stuff that had previously
15 happened with her willingness to share all these
16 things and stuff like that, that now, he must know
17 that she expects privacy in these matters.

18 So that encapsulates a lot of that. And
19 as far as the hearsay argument, the things that I'm
20 talking about, a great deal of this, my client is
21 going to testify to.

22 And if Ms. Atwood doesn't challenge
23 that, then, yes. I don't intend to offer these
24 things as exhibits because, for example, what I'd be
25 asking is, you know, "Mr. Barber, did you, as part of

1 the four-way relationship you all were establishing
2 with these other two folks, distribute these videos
3 in question to them over the internet?"

4 And if he says, "Yes," and Ms. Atwood
5 doesn't challenge that, then I don't need to offer
6 these e-mails as proof of that. But were Ms. Atwood
7 to argue them and say, "That's not true," or
8 something like that, then I think I obviously have
9 the ability to enter them as evidence as proof, given
10 that she's, you know, challenging it.

11 If she isn't challenging it, then a lot
12 of it will end up just being testimony and I won't
13 end up offering actual exhibits.

14 MS. ATWOOD: May I respond?

15 THE COURT: Mm-hmm.

16 MR. TAYLOR: Oh.

17 MS. ATWOOD: I think that the issues are
18 getting a bit confused here. First, my first point
19 is that the arguments just made by defense counsel
20 are confusing and -- and will be confusing to the
21 jury if allowed to proceed in that manner.

22 The issue in this case is not whether
23 images or videos or conversations were consensually
24 made or had. This is nonconsensual dissemination of
25 those. And defense counsel repeatedly uses the

1 "they" and "y'all" in terms of referring to the
2 defendant and the victim as though they are one unit.

3 To be clear, the exhibits of the
4 conversations that he apparently intends to ask about
5 have no reference to the victim at all. She does not
6 participate in those.

7 So to allow a line of questioning as
8 though the defendant -- as though his statements can
9 proceed under the guise that they are adopted by her,
10 that he speaks for them as a unit, would be totally
11 improper and contradictory to the evidence that's
12 been shown to me.

13 THE COURT: So these e-mails from 2010
14 to 2011, the parties were together?

15 MS. ATWOOD: Yes.

16 THE COURT: They were involved in
17 consensual sexual activity and that's all well and
18 good. That's not what we're here about. We're here
19 about the fact that they are no longer together and
20 these images that were taken during a time in which
21 they were consent -- consenting to have these images
22 taken were then disseminated without -- allegedly,
23 without the consent of the victim.

24 And that -- and that's what we're
25 dealing with. So how is it relevant that she agreed

1 to do these back in 2010, 2011?

2 MR. TAYLOR: Because back in 2000 --
3 there will be evidence and testimony, Judge, that
4 back in 2010, 2011, she did consent to their
5 disclosure. Now, Ms. Atwood, I think her witnesses
6 will say that's not true and that becomes a question
7 of fact.

8 But that is a contention for the jury.
9 And so if the question in the element of the crime
10 is: Did Ben Barber know or should have known that
11 she didn't consent, then the fact that she has
12 previously consented to their disclosure, we believe,
13 is clearly relevant to that issue, particularly given
14 that there appears to have been no explicit
15 discussion at any point afterwards, either during
16 their breakup or during the divorce, that there was
17 any discussion of these videos at all.

18 So there was no point where consent was
19 revoked. Ms. Atwood is certainly free to imply, and
20 I believe she will argue to the jury, that the
21 breakup or the divorce gave this obvious -- you know,
22 he should have known consent was withdrawn.

23 But that's a question of fact for the
24 jury to decide, Judge. And we believe that prior
25 fact -- prior evidence -- evidence that she

1 previously consented to disclosure is clearly
2 relevant to the question of what he knew about her
3 consent.

4 THE COURT: Okay. And these e-mails
5 are -- intend that you're going to be using them in
6 your case in chief; is that correct?

7 MR. TAYLOR: Primarily, I -- I certainly
8 will have cross-examination of her on them.

9 MS. ATWOOD: See, that's where I -- I
10 have a problem. She -- unless I've missed something
11 in those exhibits, nowhere in there does she ever
12 offer any verbal consent to his dissemination of the
13 videos in question.

14 And, for the most part, she's not even a
15 party to the conversations. She has no personal
16 knowledge and it's just not reflective in the
17 evidence what they're trying to get her to say.

18 MR. TAYLOR: I --

19 THE COURT: And so if that's the case
20 and -- then they wouldn't be -- they are hearsay on
21 his part and you're not going to be able to use them
22 against -- with the complaining witness. If she
23 says, "No, I didn't do that," then you just have to
24 wait until your case and -- and use your defendant.

25 MR. TAYLOR: For sure. But I believe

1 I'd be able to ask her the questions as -- as allowed
2 in cross-examination, as -- "Were you aware these
3 e-mails were being sent? Were you aware the videos
4 were being shared?" Things like that.

5 MS. ATWOOD: I --

6 THE COURT: And --

7 MR. TAYLOR: -- disagree.

8 THE COURT: -- they are your client's
9 statements and you're offering them for the truth of
10 the assertion. And he's not testifying, so they
11 would not come in through her.

12 MR. TAYLOR: Okay.

13 THE COURT: Anything else, Ms. Atwood?
14 And my understanding is, as far as the e-mails
15 regarding the dissolution, those also do not come in
16 unless she denies.

17 MR. TAYLOR: So, Judge, if I can be
18 specific about some of those e-mails, primarily, the
19 e-mails I'm asking her about are statements that she
20 has made previously. There are a handful of ones,
21 just off the top of my head, I can explain to the
22 Court.

23 For example, statements she made to
24 persons that she is the -- and the reason I get at
25 this is that Ms. Atwood, for a long time, has pitched

1 this as this -- as a domestic violence-style case.

2 And I'm not sure if that's what she's going to give
3 to the jury.

4 But if she is, her client's made -- or
5 the victim has made statements that she is the actual
6 abuser in the relationship. She is emotionally
7 abusive. She likes to play the victim.

8 Those statements would clearly be ripe
9 for cross-examination if Ms. Atwood is proceeding on
10 any form of this domestic violence theory or that my
11 client is controlling, things like that, which is all
12 the rhetoric that she has put forward in this case
13 so far.

14 The other things that I would be looking
15 to cross-examine her on are when they're getting
16 divorced, they go back and forth over e-mail a great
17 deal. And there are talks, admittedly from both
18 parties, where they both say, you know, "I'm going to
19 get a lawyer and get you arrested for this. I'm
20 going to get a lawyer and get you arrested for that."

21 And I think those statements are
22 certainly ripe for cross-examination when Ms. Vance
23 is -- has made a number of previous threats to have
24 my client arrested and incarcerated and things like
25 that.

1 THE COURT: Ms. Atwood, I -- I guess I
2 don't know what these e-mails say.

3 MS. ATWOOD: Sure. I think that might
4 be helpful. So -- well, it may be a good idea just
5 for you to go through the evidence. I know that
6 would add a little time to our timeline here today,
7 but I think that it could be valuable for you to just
8 have a look for yourself at what we're talking about.

9 The e-mails in question, again, are from
10 a number of years ago. The ones where the victim --
11 where I wrote down that she makes commentary about
12 being a -- a physical abuser are from 2013. And as
13 you're aware, there's no self-defense argument to be
14 made in a case like this.

15 That's not an issue that's at hand.
16 It's not pertinent to the elements that are charged.
17 The victim and the defendant do make a number of
18 statements to each other, kind of back and forth,
19 saying, "I'll have you arrested. Well, I'll have you
20 arrested. This is extortion. This is fraud."

21 Again, I -- I'm not planning on asking
22 the victim about any of that. To give you an -- an
23 idea of the scope of my questioning of her regarding
24 the divorce, the plan is, "How long were you dating
25 before you got married? How long were you married

1 before you filed for divorce? Who filed for divorce?
2 How long until the divorce was finalized?"

3 And, "Could you give a general
4 description of the tone of the divorce?" I think
5 that it is relevant to the jury that this was a
6 messy, drawn-out divorce for all parties involved,
7 but I don't think that anyone should be getting into
8 the weeds of the specifics of their arguments about
9 legal issues during their dissolution because it
10 confuses what issues we're here to decide today.

11 So that -- I mean, that's the scope of
12 what I intend to ask the victim regarding the
13 divorce, so I don't -- I think it would be kind of
14 outside the scope, pretty drastically, to be talking
15 about specific conversations that they had.

16 MR. TAYLOR: Judge, the evidentiary
17 rules give us incredibly wide latitude to
18 cross-examine for bias. And just as some examples to
19 give the Court some context, you know, e-mails from
20 Ms. Vance saying -- you know, talking about she's
21 going to get a lawyer.

22 "You have this choice or the other.
23 You're going to be sent to jail and then you will
24 have more lawsuits." Statements like this that she
25 has made against my client are -- are clearly

1 relevant to her bias as far as not only her making
2 these complaints at first, but also the testimony
3 she's going to give today because credibility is a
4 huge issue in this case.

5 And some of the main things that are
6 going to be for the jury to decide are the issues of
7 consent -- whether there was any discussion of it.
8 And I fully expect Ms. Vance is going to take the
9 stand and say that she didn't consent and that there
10 was some express agreement, of which there is no
11 proof.

12 And so the fact that she has repeatedly
13 over the years threatened my client with lawyers and
14 lawsuits and jail is clearly relevant to the jury as
15 a matter of bias for examining whether she's a
16 credible witness or not.

17 THE COURT: Let me -- let me just -- can
18 I see the exhibits that you intend to offer or --

19 MS. ATWOOD: Yes.

20 And, Cam, are you planning on offering
21 any of this medical information, police reports, that
22 sort of thing?

23 MR. TAYLOR: I'm going to offer a little
24 bit of it, yes.

25 MS. ATWOOD: Okay. Then that's --

1 that'll be the next thing to address.

2 MR. TAYLOR: May I approach, Judge?

3 THE COURT: Mm-hmm.

4 MR. TAYLOR: Judge, I'm approaching and
5 handing you Defense 106 and 103, as they are
6 currently marked.

7 (Whispered discussion, off the record,
8 9:27 a.m. - 9:28 a.m.)

9 MR. TAYLOR: And, Judge, my apologies.
10 I'm approaching with one more, Defense 108.

11 (Whispered discussion, off the record,
12 9:28 a.m. - 9:29 a.m.)

13 THE COURT: First of all, I don't see
14 any dates on these at all. I don't know when these
15 were sent. I don't see any verification of who's
16 sending them and who's not sending them. I don't see
17 how this is an actual business record that's been
18 kept in the normal course that would lend to its
19 authenticity.

20 MR. TAYLOR: I'll respond to that point
21 whenever you're ready, Judge.

22 (Pause in proceedings, 9:29 a.m. -
23 9:30 a.m.)

24 THE COURT: And do you plan to call
25 Nicholas Gusberg (phonetic) -- Goonsberg (phonetic)?

1 MR. TAYLOR: I do not, Judge. I only
2 plan to cross-examine Ms. Vance about her statements.

3 THE COURT: Okay. I'm -- 108 is not
4 admissible. Go ahead and make your rulings --
5 your -- make your record.

6 MR. TAYLOR: Thank you, Judge.

7 THE COURT: Mm-hmm.

8 MR. TAYLOR: I guess I would take
9 exception to that ruling. I would make an offer of
10 proof, if I could grab that document --

11 THE COURT: Mm-hmm.

12 MR. TAYLOR: -- and just read it into
13 the record. Judge, as far as my offer of proof, we
14 are offering what's marked as Defense 108 that I
15 would like to offer now, at this point, to be in the
16 record.

17 What that is, Judge, is a Facebook
18 conversation between the alleged victim in this case,
19 Meagan Vance, and some gentleman named Nicholas
20 Goonsberg. My client can and would authenticate
21 that document.

22 Contained within that document, that we
23 believe are relevant, are statements from Ms. Vance.
24 And I'm quoting directly: "Honestly, I am the
25 physical abuser. I emotionally abuse, too. I was

1 the first one to cheat. It's not just him. I play
2 the victim a lot in my life."

3 I would wish to cross-examine Ms. Vance
4 on those issues --

5 THE COURT: Okay.

6 MR. TAYLOR: -- or those statements.

7 THE COURT: And I'll note, again, on
8 108, there's absolutely no date on those and there's
9 no authentication. And I'm finding that it is highly
10 prejudicial and not relevant and that it will
11 be excluded.

12 And we'll make an exhibit list for you.

13 MR. TAYLOR: Thank you, Judge.

14 THE COURT: Mm-hmm. As to the text --
15 the other messages, what would you like me to know
16 about those, Mr. Taylor?

17 MR. TAYLOR: So, Judge, I guess kind of
18 sketching out the reason I want to offer these, I
19 want to cross-examine Ms. Vance on prior threats show
20 has made against my client.

21 These demonstrate several instances --
22 and there are dates on these, Judge, August 22nd,
23 2014 as to Defense Exhibit 103.

24 THE COURT: And where's that located,
25 Mr. Taylor?

1 MR. TAYLOR: It's the top corner by
2 the -- by the paper clip.

3 THE COURT: Okay. And who put that date
4 on there?

5 MR. TAYLOR: Judge, I believe my client.
6 As far as authenticating this, what I would do is,
7 my -- if I was going to offer them as an exhibit, I'd
8 call my client. He would talk about how this is a
9 conversation he had.

10 He had it over G Chat. He then printed
11 that conversation and it has been in his possession
12 ever since.

13 THE COURT: And so he typed it from the
14 G Chat or he printed it?

15 MR. TAYLOR: No, Judge. So just to be
16 clear for the record, you know, G Chat is an on-line
17 chat database where people chat back and forth over
18 text. If you just click the button on there and say,
19 "Print conversation," it'll just print the
20 conversation you just had.

21 THE COURT: And so he dated that?

22 MR. TAYLOR: I believe when it's
23 printed, the date is assigned to it, as in -- as in
24 the computer puts the date on the top.

25 THE COURT: Okay.

1 MR. TAYLOR: So, Judge, with regard to
2 that, that conversation -- again, Defense 103 --
3 begins with an argument. This is in the context of
4 their divorce. Ms. Vance says, "If you don't sign
5 divorce papers" -- and this is the conversation
6 regarding money that they were arguing about.

7 My client responds, "Oh, the blackmail
8 again?" Ms. Vance then responds, "Unlike you, I
9 don't commit fraud on my wife and try to steal all
10 her money."

11 She continues, "Anyways, if you aren't
12 signing the papers and showing you want to help me
13 out, I will be giving any statement necessary that is
14 truthful, as well as getting a lawyer and going after
15 you for fraud."

16 I believe those are the relevant parts
17 of that conversation. And then they sort of get into
18 a back-and-forth spat. So, Judge, the reason I want
19 to offer that is that a significant part of our
20 theory in this case is that Ms. Vance doesn't
21 actually have a problem with these videos being
22 out there.

23 The reason we believe that is important
24 is because in July of 2015, somebody tried to hack
25 into my client's FTP cloud server where these videos

1 had just been sitting for a very long time.

2 My client -- and we have evidence fort
3 his as well -- discussed that issue with Ms. Vance
4 and said, "Hey, did you hear about someone trying to
5 hack in and get our pornography?" And she relies by
6 saying, "Yeah, I heard something about that." She
7 doesn't seem alarmed in the least.

8 And so a significant part of our theory
9 of the case is that she's only bent out of shape here
10 when my client, the guy she wants to get rid of and
11 get out of her life, does it. And when other people
12 seem to be attempting or sharing this pornography,
13 she does not actually care.

14 So, again, Judge, bias in this kind of
15 case is so incredibly relevant to the jury
16 understanding what witnesses are credible and what
17 are not and what their motives to fabricate their
18 testimony will be because in the end, this is a he
19 said/she said case.

20 So the fact that, on multiple prior
21 occasions, Ms. Vance has made other threats to my
22 client to get him to give her money or agree to her
23 wishes and she has threatened him with lawyers and
24 lawsuits and jail, we believe that is incredibly
25 relevant to assessing her credibility about what she

1 has to say about the issues in this case.

2 And just to wrap up, Defense 106,
3 another one of these G Chat conversations, this one
4 dated May 16th of 2015, Ms. Vance makes statements,
5 "Benjamin, this is what's going to happen. I'm
6 calling the landlord tomorrow and this lawyer.

7 "They may have already been planning to
8 split the funds, but either way, you're going to
9 split it with me and be in a lot more debt and have
10 your paycheck subsidized for a very, very long time
11 to pay your debts back to me and possibly be sent to
12 jail.

13 "And -- well, then you have -- then --
14 well, then you will have more lawsuits. And fraud is
15 a serious, serious crime. I can go after you for
16 committing fraud on the gas bill as well. I have
17 ample proof. You have until tomorrow morning when I
18 message you to think about it.

19 "I've already chosen a lawyer, and I
20 offered you this cheaper chance to save us both. I
21 100 percent will call the lawyer if you still do not
22 agree to this and will be taking you to court on two
23 counts of Fraud and at least one count of Harassment
24 from the Craigslist post.

25 "Good night. I hope you make a wise

1 decision before tomorrow."

2 THE COURT: And, at this time, you're
3 simply reading her statements; is that correct?

4 MR. TAYLOR: Correct. So, Judge, those
5 types of statements, again, we believe would be so
6 incredibly relevant to this case, her allegations
7 against my client and the reasons why we believe she
8 has motives to fabricate in this case.

9 THE COURT: Ms. Atwood?

10 MS. ATWOOD: Could I look at this one?

11 (Pause in proceedings, 9:36 a.m. -
12 9:37 a.m.)

13 THE COURT: So at this time, I'm
14 inclined to allow you to inquire into that,
15 Mr. Taylor. I'm not going to allow you to offer the
16 exhibit unless your -- unless Ms. Vance can identify
17 it. It is not her document.

18 And, therefore, if you wish to have it
19 entered in your case in chief, you can have your
20 client identify it.

21 MR. TAYLOR: Thank you, Judge.

22 MS. ATWOOD: Is -- is that in reference
23 to both of the exhibits he just talked about?

24 THE COURT: Yes.

25 MS. ATWOOD: Okay. Can I see the other

1 one real quick? Just --

2 THE COURT: It's 103 and 106, correct?

3 MR. TAYLOR: Correct.

4 MS. ATWOOD: Okay. So, Judge, in
5 reviewing the stack of documents that have been
6 provided by Mr. Taylor, there's a few other things
7 that I wanted to address. We've already talked about
8 the conversations between defendant and others.

9 There are a stack of what looks like
10 medical records and -- and what appears to be an
11 advertisement for the Multnomah County Crisis Line.
12 These appear to be records of the defendant's when he
13 was having suicidal ideations in 2013 and 2016.

14 I'm not entirely sure what the relevance
15 of this is to today's case. It's not my
16 understanding that they've made any kind of mental
17 defect defense.

18 And without having an expert witness to
19 testify about in what way this could potentially be
20 related to the allegations that are at issue, I don't
21 believe that the defendant, if he wants to testify
22 about this, would have sufficient knowledge to get
23 into medical details.

24 And as for the advertisement, I don't
25 think that there's any real way that this needs to

1 some in.

2 THE COURT: Mr. Taylor.

3 MR. TAYLOR: So, Judge, again, one of
4 the elements of this crime is intent, right? What
5 was the defendant's intent when he posted these
6 videos? And we are basically conceding that at least
7 some of these videos were posted by my client.

8 As for what was his intent, the -- what
9 is going to be presented in the evidence and
10 testimony is that my client put these videos online
11 because he was about to kill himself.

12 And part of what he did before wanting
13 to kill himself was to spread a lot of things he had
14 created onto the internet as sort of a internet
15 memorial to himself. So he gets on Facebook. He
16 posts all of his personal photos.

17 He gets onto this website called GitHub
18 and he posts a substantial amount of -- of coding and
19 things like that that he had written in his
20 professional capacity. And then, finally, he, as
21 he's going through all this stuff, finds these
22 pornography videos.

23 He looks back on them, realizes those
24 are the last time that he was truly really happy in
25 life. And what he does is put them out into this

1 sort of sea of amateur pornography that's floating
2 around on the internet.

3 So that is what his intent was when he
4 put these videos up. So that -- what -- what I'm
5 getting at there is his intent was to kill himself
6 and leave a mark on this world, not to harass,
7 humiliate or injure Ms. Vance.

8 So as far as his records that he was
9 being hospitalized for suicidal ideation and he was
10 carrying around these resources for crisis centers,
11 these are documents I wish to enter to prove up those
12 claims.

13 THE COURT: And where is the foundation
14 for these?

15 MR. TAYLOR: Well, my client --

16 THE COURT: Are you calling a doctor?
17 Then it's hearsay. It's not coming in. It's not
18 coming in. Unless the person that made the records
19 is here to bring them in, they're not coming in.

20 MR. TAYLOR: I understand, Judge.

21 THE COURT: Okay. Anything else?

22 MS. ATWOOD: Yes. So there's also some
23 legal paperwork regarding restraining orders that
24 were filed during, looks like, 2013 in Multnomah
25 County. This is kind of in the midst of their split

1 up. They had -- both of them had independent arrests
2 for Harassment. There were a number of issues of
3 that nature.

4 I don't see how the restraining order
5 is -- has any bearing on what the issues are in
6 today's case, especially considering it was from
7 three years ago and they both mutually filed them
8 against each other.

9 There's not, again, a -- a self-defense
10 claim to be made in this situation, so I don't
11 believe that there's any relevance to this.

12 MR. TAYLOR: Judge, I brought those
13 along with me primarily to see what Ms. Atwood was
14 going to do with Ms. Vance on direct. I don't have a
15 theory under which I admit those straight out the
16 gate. The only reason I brought them was if I was
17 needing to confront Ms. Vance to contradict any
18 statement she made.

19 So at this point, I'm not intending to
20 offer those two exhibits. If anything changes about
21 that, I'll bring it up.

22 THE COURT: Okay. Thank you.

23 MS. ATWOOD: One last thing: Defense
24 counsel brought today a copy of the victim's, like,
25 impact statement that she forwarded to, I believe it

1 was, Judge Upton over at the Law Enforcement Center
2 during the defendant's motion for release from
3 custody while this case was pending.

4 I don't -- I guess my first question
5 would be to you. What would be the purpose of
6 offering this statement?

7 MR. TAYLOR: So, Judge, this is a
8 statement, as Ms. Atwood said, that the victim
9 forwarded to the Court and her lawyer, basically -- I
10 can't remember if it was Ms. Atwood who stood up and
11 read it on her behalf or -- or her attorney.

12 But this statement, in our opinion,
13 contains blatant falsehoods relating to Mr. Barber
14 and this case. And so if she's making statements to
15 the Court that are false, I intend to confront her
16 and have a discussion with her about those.

17 THE COURT: And so -- I apologize,
18 Mr. Taylor. So your intention would be to somehow
19 have a line of inquiry about her prior court
20 appearance in this case?

21 MR. TAYLOR: She didn't actually appear.
22 She wrote this statement and had somebody read it to
23 the judge, so, yes. I would be having a line of
24 inquiry about statements she's made in this case
25 regarding my client.

1 THE COURT: And what -- what does this
2 statement say?

3 MR. TAYLOR: Should I just read it to
4 you, Judge?

5 THE COURT: Yes.

6 MR. TAYLOR: Statement of Meagan Vance.
7 "I have several concerns about my safety of Benjamin
8 Barber is released. Benjamin has a history of
9 harassing and threatening my safety, which has
10 continued since this case has begun.

11 "Benjamin was strongly emotionally
12 abusive to me in our relationship from 2010 to 2013,
13 involving harassment and even physical abuse if I did
14 not do what he wanted. When I left him in 2013, he
15 began a downward spiral into believing that feminism
16 brainwashed me.

17 "He threatened to follow me across the
18 country and was arrested for trespassing at feminist
19 conferences. Benjamin promised to try to damage my
20 life as much as possible since I left him in late
21 2013. And his actions since show that he continues
22 to try to cause me alarm.

23 "For example, he has purchased the
24 domain names of my full name, and since this case
25 started, he has e-mailed to my work e-mail links to

1 the intimate images he posted of me.

2 "Additionally, I strongly believe that
3 he has mental illness, causing him to believe that I
4 am responsible for his struggles in life since I
5 left.

6 "For example, when Benjamin found out
7 that I had made a report to police, he sent me
8 repeated e-mails and called my boyfriend asking if I
9 was still going to attack him by going through with
10 the case.

11 "Benjamin has a history of finding my
12 address and other personal information through the
13 internet. I am concerned that he has -- I am
14 concerned that as he continues to believe that I am
15 hurting him because I reported this crime, his
16 actions will continue to spiral downward into showing
17 up at my home or work."

18 THE COURT: Okay. And how is that
19 relevant to the State's case in chief in -- in your
20 defense, sir?

21 MR. TAYLOR: Judge, because our opinion
22 is that this contains, again, blatant falsehoods.
23 For example, she makes a claim that Mr. Barber sent
24 links to these videos to her work.

25 That just didn't happen. What he sent

1 -- and I -- I have another exhibit to that effect --
2 is proof that he had disabled these videos, proof
3 that he had removed them from the internet.

4 So if she's making a statement which --
5 regarding a judge's release decision of my client and
6 that statement is false, I believe that is certainly
7 a ripe ground, again, for cross-examination for bias
8 and overall truthfulness.

9 THE COURT: Ms. Atwood?

10 MS. ATWOOD: Your Honor, I guess I still
11 don't really think that it goes to the elements that
12 are at issue in the case. And I also feel that
13 it's -- generally would be inappropriate to offer
14 against the victim a statement that she's entitled to
15 make as a -- as a crime victim.

16 She has a right to have input at a
17 release hearing. She was not under oath at that
18 time. So it -- it wouldn't really qualify as a prior
19 inconsistent statement. She didn't even appear to
20 read it on her own behalf.

21 And there's a whole lot of collateral
22 information in there that's not particularly
23 relevant. So, I mean, I -- I -- I just don't -- I
24 don't see why it should come in.

25 THE COURT: Okay. And I -- I'm not

1 going to allow that coming in. That was made for
2 purposes of a release hearing during the pendency of
3 the crime. It doesn't have anything to do with the
4 evidence that caused the crime to be charged.

5 And you're going to get the other stuff
6 in, so I'm not going to allow the victim's impact
7 statement to be presented to the jury.

8 MR. TAYLOR: Judge, may I offer that for
9 the record and --

10 THE COURT: Yes.

11 MR. TAYLOR: -- take exception to --

12 THE COURT: Mm-hmm.

13 MR. TAYLOR: I did -- I've already
14 covered my offer of proof, as I just read it into the
15 record.

16 THE COURT: Anything else, Ms. Atwood?

17 MS. ATWOOD: I don't know.

18 Did you want to look through what I'm
19 intending to use today?

20 MR. TAYLOR: Yes, I didn't get a
21 chance --

22 MS. ATWOOD: (Indiscernible).

23 MR. TAYLOR: -- to do that.

24 MS. ATWOOD: So, yeah. If we could have
25 a moment to look through the exhibits that the State

1 intends to offer in case he has any additional --

2 THE COURT: All right. And then --

3 MS. ATWOOD: -- issues to raise.

4 THE COURT: -- I also -- noting from the
5 misdemeanor complaint that this is nine separate
6 acts, I'm assuming that you're going to be electing
7 on each of these?

8 MS. ATWOOD: I -- I've never received a
9 motion to make more specific. I can do that if it
10 would make it more clear for the jury instructions
11 and things like that. That's fine.

12 THE COURT: Well, I'm just wondering how
13 you're going -- I mean, you've got nine separate --

14 MS. ATWOOD: What the theory is --

15 THE COURT: -- acts here.

16 MS. ATWOOD: -- for the different
17 counts? It's basically one count per website.

18 THE COURT: Okay. So your -- your jury
19 has to --

20 MS. ATWOOD: Yes.

21 THE COURT: -- six on each particular
22 theory.

23 MS. ATWOOD: Yes.

24 THE COURT: So the way this is laid out,
25 there's no way to know which theory you're presenting

1 to them. So I'm assuming that you would be
2 requesting some sort of Boots instruction.

3 MR. TAYLOR: Yes, Judge.

4 THE COURT: So we need to get that taken
5 care of.

6 MS. ATWOOD: We can do that.

7 THE COURT: I intend to simply, when
8 they come in, tell them that Counts 1 through 9 of
9 Unlawful Dissemination and then just read the one,
10 you know, Count 1. I'm not going to read nine
11 separate counts.

12 MR. TAYLOR: And, Judge, I -- I think we
13 didn't let the Court know about this, but we have
14 come to a stipulation where the jury's not going to
15 need to view these videos, so --

16 MS. ATWOOD: Well, I -- I've had some
17 time to think about that and I think that it would be
18 prudent of me, on behalf of the State, to not -- not
19 necessarily play the videos in evidence during the
20 course of the trial.

21 But I do intend to offer all of the
22 copied screenshots and the videos, themselves, that
23 were obtained by law enforcement. I think that there
24 are -- way too many of the elements of the crimes can
25 be made more or less likely by viewing the videos,

1 including whether or not someone might reasonably
2 find that they would be harmed by these things being
3 posted.

4 So I do intend to offer the disks
5 themselves into evidence, but not play them during
6 the trial.

7 THE COURT: Okay. That makes sense.

8 Anything on that, Mr. Taylor?

9 MR. TAYLOR: I offered the stipulation
10 as sort of a -- what I thought was a polite
11 concession. So if they don't want it, it's all right
12 with me.

13 THE COURT: Okay. And then, Ms. Atwood,
14 just in looking at your jury instructions on 14,
15 you're asking for a definition of "image" and a
16 definition of "disclose."

17 MS. ATWOOD: Yes. They're included in
18 the statute itself, so I figured since they're
19 specifically pertaining to this new crime and aren't
20 defined elsewhere, that they should be added,
21 unless -- unless they are not relevant at all at the
22 end of the evidence.

23 THE COURT: Okay. And so I'm assuming
24 that you're going to present me with what you --

25 MS. ATWOOD: Yes.

1 THE COURT: -- believe the definition of
2 "image" and "disclose" is 'cause it's nowhere in the
3 jury instructions.

4 MS. ATWOOD: Right.

5 THE COURT: And then on "intimate
6 parts," I'm assuming you're just asking for 16.01.

7 MS. ATWOOD: Yes.

8 THE COURT: And then the "sexual
9 intercourse" and "deviant sexual intercourse" and its
10 definitions under 1600.420 and then 16 for "sexual
11 conduct."

12 MR. TAYLOR: That's all fine with us,
13 Judge.

14 THE COURT: Okay.

15 MS. ATWOOD: Yes, Judge.

16 THE COURT: All right. So how long do
17 you think you need to look at her evidence,
18 Mr. Taylor?

19 MR. TAYLOR: 15 minutes or so, Judge --

20 THE COURT: Okay.

21 MR. TAYLOR: -- to review it.

22 THE COURT: Mm-hmm.

23 MR. TAYLOR: And I was just going to ask
24 your staff if I could, for my notes, double check
25 these.

1 THE COURT: And we will need to do an
2 exhibit list and have those be entered and then
3 return them to him. And he needs to sign off on it.
4 That would -- just for purposes of the motion. Thank
5 you.

6 (Whispered discussion, off the record,
7 9:50 a.m.)

8 THE COURT: All right. So we'll be off
9 the record, yes. Do you --

10 (**TRANSCRIBER'S NOTE:** The audio record
11 ends midsentence.)

12 (Recess taken, 9:50 a.m. - 10:13 a.m.)

13 THE COURT: Please be seated.

14 All right. So there's apparently some
15 issues on the State's exhibits; is that correct?

16 MR. TAYLOR: That's correct, Judge.

17 THE COURT: Okay.

18 MR. TAYLOR: Judge, we have two exhibits
19 we are arguing about. I'm going to start with a
20 letter -- this is a letter from -- it's State's
21 Exhibit 1 -- letter that appears to be addressed to
22 my client dated March 3rd, 2015 from Portland State
23 University attorney on behalf of Ms. Vance.

24 It expresses that Ms. Vance wishes to
25 have no further contact with the client. And this is

1 arising in the context of the divorce, which was
2 still going on at this time. "Cease and desist with
3 all contacts. Your attempts to communicate are
4 offensive and unwanted.

5 "If you do not immediately refrain from
6 all future attempts to contact Ms. Vance, my office
7 will explore and file appropriate legal actions
8 against you, including but not limited to criminal
9 charges, Stalking, restraining and protective
10 orders," things like that.

11 So, Judge, I'm objecting to this on, I
12 guess, several grounds. One, I think it is hearsay.
13 Two, and most importantly, I think it falls under
14 pretty much all the arguments the State just made to
15 exclude my evidence as far as prior communications
16 and animosity between these two parties, particularly
17 legal threats.

18 So, basically, on the same grounds the
19 State moved to exclude a good bit of my stuff, I
20 would be moving to exclude this.

21 THE COURT: Okay. Ms. Atwood.

22 MS. ATWOOD: So, Judge, part of the
23 evidence that is -- that the State intends to offer
24 today is a series of communications that are leading
25 up to the investigation in this case. So nothing

1 that we're intending to offer predates 2015.

2 But a lot of what we intend to offer
3 involves the victim repeatedly telling the defendant
4 that she wants nothing to do with him and no contact
5 from him, this being probably the strongest, I guess,
6 message that he received to that effect.

7 From our perspective, this evidence is
8 relevant to the defendant's knowledge of the victim's
9 lack of consent for him to be, I guess, distributing
10 materials that would be harmful to her, his intent,
11 in fact, to harm her and the -- oh, I forgot where --
12 what my last point was.

13 I can't think of what my last point was.
14 Sorry, Your Honor. But we think that it's relevant
15 to his state of mind. As far as how we intend to
16 offer it, I don't intend to offer the exhibit through
17 the victim.

18 I would ask her a question about whether
19 or not she saw this cease and desist from contact
20 from the -- the defendant during the course of the
21 spring of 2015.

22 If the defendant chooses to testify and
23 indicates that he had no reason to believe that his
24 actions toward her were offensive or harassing or
25 humiliating, which are elements of this crime, I

1 think that that exhibit would be relevant to his
2 knowledge of those things.

3 THE COURT: Okay. And do you intend to
4 call the writer of that letter?

5 MS. ATWOOD: No. It would be on the
6 basis that it was sent to him.

7 THE COURT: Okay.

8 MS. ATWOOD: It was received by him.

9 THE COURT: Okay. So I think -- again,
10 I think under those contexts, if he gets up and says
11 he didn't know, that it would be relevant to inquire
12 as to whether or not he received the letter. As far
13 as the admissibility, I think you have to have the
14 writer here in order to get it in.

15 MS. ATWOOD: In that case, I would offer
16 the victim as a rebuttal witness because it was her,
17 I guess, adoptive statement sent to him at the -- her
18 own request through her attorney because they were
19 not permitted to personally contact each other at
20 that point.

21 THE COURT: Okay. And I'm going to
22 require that you have the writer of the letter.

23 MS. ATWOOD: Okay.

24 THE COURT: Okay.

25 MR. TAYLOR: Judge, may I briefly

1 respond to one issue Ms. Atwood raised --

2 THE COURT: Mm-hmm.

3 MR. TAYLOR: -- on that point?

4 Our position would be that this letter
5 does not speak at all to his intent or state of mind.
6 This letter makes absolutely no reference to any sort
7 of videos or dissemination or anything like that.

8 All it says is: "In the context of this
9 divorce, don't talk to me anymore." And, as I
10 mentioned earlier, Judge, we have a substantial
11 amount of evidence showing that after this letter,
12 Ms. Vance initiated conversation with my client.
13 She -- she reinitiated contact in that department.

14 THE COURT: Okay. Well, I think what it
15 does is it actually -- the evidence that you're
16 asking to get in, 103 and 106, this is relevant for
17 the purposes of you getting that information in.

18 So I would -- I appreciate your
19 objections and they've been noted, but given those
20 particular circumstances, I do believe it would be
21 relevant and admissible.

22 But, again, simply to inquire, I will
23 not allow the exhibit itself in unless and -- unless
24 and until the State brings the actual author of
25 the document.

1 MR. TAYLOR: Understood, Judge. Judge,
2 the second piece of evidence the State is wanting to
3 offer that I'm going to object to is a printout of
4 what appears to be a Craigslist post featuring -- and
5 this is State's --

6 Is that 13?

7 MS. ATWOOD: Yes.

8 MR. TAYLOR: State's 13. Judge, this is
9 a -- what appears to be a Craigslist post entitle
10 Wife Jailed Last Night for DV, Men for Women 28. It
11 has a photograph, if the Court may see, of what
12 presumably appears to be Mr. Barber and Ms. Vance in
13 what appears to be a state of nudity, hugging each
14 other.

15 There's some other sort of
16 undecipherable, very small photos down here. And
17 then it goes into a discussion about mental health,
18 assault, some sort of sex type of talk.

19 The next page is another what appears to
20 be Craigslist-posting-type thing, which shows a photo
21 of booking information from what I know from personal
22 experience to be the Multnomah County Sheriff's
23 Office online website.

24 And down below, it has the same text
25 that I previously mentioned. Judge, I don't believe

1 this is relevant in the least to this case. And if I
2 may look for a date, it appears -- I believe that
3 says 2013 -- October 27th, 2013.

4 So, again, on a -- a lot of the same
5 grounds that the State moved to exclude a substantial
6 portion of my evidence, I would be doing the same
7 thing. I don't know who's going to authenticate
8 this. I don't know how they intend to tie that to
9 Mr. Barber.

10 They can certainly speculate that
11 perhaps he posted that, but I think that's about it.
12 And the biggest thing, Judge, is that I think if the
13 State intends to offer this, then I think that blows
14 the door sort of wide open on a lot of stuff that the
15 State wants to keep out of this trial as far as
16 getting into things that happened in their
17 relationship.

18 And we're all of a sudden going to be
19 talking about how both parties got arrested for
20 domestic violence, you know, within a few months of
21 each other. Both parties took restraining orders out
22 on each other.

23 And I think that's going to sort of open
24 the flood gates to a -- a lot of what, I think, both
25 parties don't want to get into. But if that comes

1 in, we -- we would need to respond to that. And
2 that's where that trial -- this trial would go.

3 THE COURT: Okay. May I see that
4 exhibit, please, Mr. Taylor?

5 MR. TAYLOR: Yes, Judge.

6 THE COURT: Thank you.

7 MR. TAYLOR: And, again, this is
8 Defense -- or State's 13.

9 THE COURT: And, Ms. Atwood.

10 MS. ATWOOD: May I respond, Your Honor?

11 THE COURT: Mm-hmm.

12 MS. ATWOOD: So, I guess, to be clear,
13 what that exhibit depicts is the defendant and the
14 victim having sex in a photograph that he took.

15 And if you read the text of the post
16 that he clearly made when he respond -- I guess,
17 posted to Craigslist that this was his wife, it
18 refers to him being done with her and angry with her
19 because of things that she had done to him.

20 And his response, as you can see, was to
21 post sexually-explicit photos of her on the internet
22 as well as a picture of her mug shot from her arrest.
23 I believe that this is highly relevant, considering
24 what we've heard this morning about the defense's
25 intent to make a mental instability-type defense in

1 their case in chief.

2 It's my understanding that the
3 defendant's argument is that his actions did not
4 arise out of anger or revenge and that his conduct
5 was a pure reflection of his mental breakdown at the
6 time, his depression.

7 The fact that he has previously
8 responded in anger by posting sexually-explicit
9 photos and humiliating information about this victim
10 to the internet on a public website that she then
11 found, is relevant to rebut his defense and his
12 intent in this case.

13 And as you know, as far as 404(3)
14 evidence goes, that evidence would be admissible as
15 proof of intent, motive, lack of mistake and
16 knowledge. And all of those are relevant to this
17 case.

18 THE COURT: Okay. And so it -- it seems
19 like it's a little premature this would come in after
20 the State's --

21 MS. ATWOOD: That's correct.

22 THE COURT: -- case in chief. And so
23 I'm going to -- I'm not going to rule on this at this
24 point. I'm going to kind of see where things go
25 before I make a ruling on State's Exhibit 13.

1 MS. ATWOOD: Yes.

2 MR. TAYLOR: And I guess the only thing
3 I -- I would want to mention on that point, Judge, is
4 that if this came in on the State's rebuttal case, we
5 would be seeking surrebuttal to -- to rebut a lot of
6 the allegations coming out of that.

7 THE COURT: Okay. And that would just
8 depend on what happens.

9 MR. TAYLOR: Understood.

10 THE COURT: Okay. Anything else?

11 MR. TAYLOR: I would -- and I'll be
12 totally honest, didn't get as much sleep as I
13 would've liked to last night, so if we could quickly
14 recap what has been excluded at this point and what
15 hasn't --

16 MS. ATWOOD: That's probably a good
17 idea.

18 MR. TAYLOR: -- so that neither of us
19 goes places on opening statement that we don't --

20 MS. ATWOOD: Yes.

21 MR. TAYLOR: -- need to go.

22 THE COURT: Okay.

23 MR. TAYLOR: My notes, obviously, have
24 the conversation with Nick Goonsberg. The statements
25 made by Ms. Vance have been excluded.

1 THE COURT: Correct.

2 MR. TAYLOR: The Court has --

3 THE COURT: That's 108, correct?

4 MR. TAYLOR: The Court has excluded
5 discussion of Ms. Vance's release statement.

6 THE COURT: Correct.

7 MR. TAYLOR: The Court has excluded
8 documentation on Mr. Barber's suicide but, obviously,
9 that -- he can testify to that all he wants.

10 THE COURT: Right.

11 MR. TAYLOR: And then as far -- what I'm
12 hazy on is the -- is the Court's decisions on the --
13 the sort of old matters, the 2010, 2011 stuff.

14 THE COURT: And those were the -- the
15 attempts to solicit prostitution during the marriage,
16 correct?

17 MS. ATWOOD: Yes.

18 THE COURT: Those are the e-mails
19 that --

20 MS. ATWOOD: Well, the --

21 THE COURT: -- related --

22 MS. ATWOOD: -- the defendant's own --

23 THE COURT: Not prostitution, I'm sorry.

24 MS. ATWOOD: -- messages to others
25 soliciting sex.

1 THE COURT: Soliciting pornographic --

2 MS. ATWOOD: Yes.

3 THE COURT: -- in 2010. And the -- the
4 Court will be excluding those.

5 MR. TAYLOR: Will the Court be excluding
6 just the exhibits or testimony to that matter?

7 THE COURT: Just the exhibits.

8 MR. TAYLOR: Okay. So fair game to
9 discuss the matters.

10 MS. ATWOOD: Is that in reference to on
11 cross of the victim in the case? 'Cause that was
12 part of our objection, is she was not party to those
13 conversations and would have no personal knowledge.

14 THE COURT: Well, I think that it
15 doesn't come in chief. It's going to come in in
16 defendant's case in chief and then you would have
17 rebuttal.

18 MS. ATWOOD: Yes. I just wanted to make
19 sure he's not going to be able to cross her on these
20 things, basically, ring the bell that can't be --

21 THE COURT: Correct.

22 MS. ATWOOD: -- unrung, even if she
23 later says --

24 THE COURT: Correct.

25 MS. ATWOOD: -- "No. I don't know what

1 you're talking about"?

2 THE COURT: Right.

3 MS. ATWOOD: Okay.

4 MR. TAYLOR: I -- sorry, Judge.

5 THE COURT: Yes.

6 MR. TAYLOR: I'm now a little bit
7 confused about our -- our rules because, you know,
8 Ms. Atwood's going to do direct examination of the
9 victim, talking about the big issues of consent, my
10 client's knowledge of that consent.

11 Is the Court's position that I -- I
12 can't even touch 2010 and 2011 on crossing her or I
13 have to live with what she says and then my
14 client's --

15 THE COURT: Yes.

16 MR. TAYLOR: -- forget about that?

17 The --

18 THE COURT: You have to live with what
19 she says.

20 MR. TAYLOR: That's fine.

21 THE COURT: Okay. Anything else then?

22 MS. ATWOOD: And then the exhibits
23 involving the conversations between the defendant and
24 the victim. Was it 103 and 1-0 --

25 THE COURT: 6.

1 MS. ATWOOD: -- 6?

2 THE COURT: Mm-hmm.

3 MS. ATWOOD: Are those allowed as
4 exhibits or as part of questioning?

5 THE COURT: In cross, they would be
6 allowed as part of questioning. Obviously, in
7 defense's case, he would be able to offer them as
8 exhibits because at that point, he'll be able to lay
9 the foundation for their admissibility.

10 MS. ATWOOD: Okay.

11 MR. TAYLOR: Thank you for the
12 clarification, Judge.

13 THE COURT: Okay. And the parties have
14 had a chance to review some of the jury stuff?

15 MS. ATWOOD: I have not quite gotten
16 to it.

17 THE COURT: Okay.

18 MS. ATWOOD: I'm only -- I'm only a few
19 pages in.

20 THE COURT: Okay. Mr. Taylor, what
21 about you?

22 MR. TAYLOR: A little bit behind that,
23 Judge.

24 THE COURT: Okay. So what we have the
25 opportunity to do is go ahead and I'll give you

1 five minutes to review them. Then what will happen
2 is my staff will go down and collect them. That
3 takes approximately ten minutes.

4 So they'll be back up here and then
5 we'll just go ahead and -- and start. So you'll have
6 about 15 minutes to continue your review of those.

7 MS. ATWOOD: Okay.

8 THE COURT: Okay. So --

9 MS. ATWOOD: And there's one thing that
10 I wanted to mention. It doesn't have to do with the
11 evidence. But the victim is outside. She does
12 intend to watch parts of the trial throughout
13 the day.

14 But she has asked me to request that
15 this kind of operate in the same way that we would
16 deal with a restraining order-type hearing, where if
17 we're breaking for a recess or something, we can
18 verify that she leaves the building before the
19 defendant leaves the room. She doesn't want to risk
20 running into each other.

21 THE COURT: I'm assuming that you have a
22 victim's advocate with her, correct?

23 MS. ATWOOD: Not at this particular
24 moment. She has her attorney with her.

25 THE COURT: Okay. And so you're asking

1 that she leave the building?

2 MS. ATWOOD: No. That -- that she be
3 allowed to leave the building before the -- the
4 defendant leaves the courtroom so that they're not
5 running into each other in the hallway. Just -- does
6 that make sense?

7 THE COURT: So you want her to leave the
8 building before he is able to leave the courtroom?

9 MS. ATWOOD: If that's okay or vice
10 versa, only when we're breaking for any reason.

11 THE COURT: I will -- I'll give her
12 five minutes, but --

13 MS. ATWOOD: Okay. That's fine.

14 THE COURT: -- I'm not going to have
15 somebody call and say she's out --

16 MS. ATWOOD: No, that's not --

17 THE COURT: -- of the building.

18 MS. ATWOOD: -- necessary. Just a
19 little bit of leeway time.

20 THE COURT: Okay.

21 MS. ATWOOD: Yeah.

22 THE COURT: All right. Anything else,
23 Mr. Taylor?

24 MR. TAYLOR: Not at this time, Judge.

25 Thank you.

1 THE COURT: Okay. And I just -- I just
2 want to remind you, I -- I notice that your client
3 has raised his hand and given you some information
4 and tried to speak.

5 I just would -- would ask that you
6 remind him that he -- what his role is in this
7 proceeding and that he needs to conform his behavior
8 to the rules of the Court.

9 MR. TAYLOR: Understood, Judge.

10 THE COURT: Thank you, sir.

11 (Recess taken, 10:27 a.m. - 10:46 a.m.)

12 THE COURT: All right. And so I just
13 want to double check before -- that we expect this to
14 be done by tomorrow, correct?

15 MR. TAYLOR: We do, Judge.

16 THE COURT: Okay.

17 MS. ATWOOD: Hope so.

18 THE COURT: Thank you. I'm going on
19 vacation for two weeks after that, so --

20 MS. ATWOOD: Oh, lucky you.

21 THE COURT: Yeah.

22 MR. TAYLOR: I am also leaving on
23 vacation.

24 THE COURT: Okay. Good.

25 MS. ATWOOD: I'm actually leaving on

1 vacation as well.

2 THE COURT: It's going to get done. All
3 right. Great.

4 All right. So ready?

5 MR. TAYLOR: We are.

6 THE COURT: Yes?

7 MS. ATWOOD: Let me go tell them that --
8 she wants to watch jury selection.

9 (Whispered discussion, off the record,
10 10:46 a.m. - 10:47 a.m.)

11 (The following proceedings were held in
12 open court, the prospective jurors being present,
13 10:47 a.m.)

14 THE COURT: Good morning. I am
15 Beth Roberts. I'm one of the 14 elected judges here
16 in Washington County. And I just want to do a quick
17 check and make sure everybody's in the right seat.

18 So, Mr. Garrison? Thank you.

19 And, Ms. Welsh?

20 And then, Mr. Berry?

21 JUROR BERRY: Yes.

22 THE COURT: Thank you.

23 And, Ms. Bergren, is that you?

24 JUROR BERGREN: Yeah.

25 THE COURT: Okay. Just checking to make

1 sure everybody's in the right seat.

2 Then it looks like Mr. Gonzalez? Thank
3 you.

4 And then Seat 18, Mr. Hayden? Thank
5 you.

6 All right. Welcome. We're here today
7 to select a trial jury for the criminal case of State
8 of Oregon versus Benjamin J. Barber. The State is
9 represented by Marie Atwood.

10 MS. ATWOOD: Hello.

11 THE COURT: And the defendant is
12 represented by Cameron Taylor and Christina Helregel,
13 who is not here yet. In this case, the defendant is
14 charged with the offenses as follows:

15 In Counts 1 through 9, Unlawful
16 Dissemination of an Intimate Image, that the
17 defendant, on or about January 1st, 2016 and
18 June 21st, 2016, in Washington County, Oregon, did,
19 with the intent to harass, humiliate or injure Meagan
20 Vance, knowingly cause to be disclosed through an
21 internet website an identifiable -- identifiable
22 image of Meagan Vance, whose intimate parts were
23 visible and/or who was engaged in sexual conduct when
24 the defendant knew or reasonably should have known
25 that Meagan Vance did not consent to the disclosure.

1 Meagan Vance was harassed, humiliated
2 and/or injured by this disclosure and a reasonable
3 person would have been harassed, humiliated and/or
4 injured by this disclosure. To these offenses, the
5 defendant has entered a plea of not guilty.

6 A plea of not guilty denies that
7 defendant is guilty of the offenses as alleged.
8 Under our system of justice, a defendant is innocent
9 of any crime or wrongdoing unless and until the State
10 proves the defendant's guilt beyond a reasonable
11 doubt.

12 Therefore, the burden is on the State to
13 prove the defendant's guilt beyond a reasonable
14 doubt. Some of you may have served as jurors in
15 civil cases where lesser standards of proof apply.

16 For example, proof by a -- excuse me --
17 proof by a preponderance of the evidence or proof by
18 clear and convincing evidence.

19 In criminal cases, however, the State's
20 burden must be more convincing. It must be beyond a
21 reasonable doubt. Reasonable doubt is doubt based on
22 common sense and reason. Reasonable doubt means an
23 honest uncertainty as to the guilt of the defendant.

24 Reasonable doubt exists when, after
25 careful and impartial consideration of all the

1 evidence in the case, you are not convinced the
2 defendant is guilty. Each juror must be able to
3 judge this case fairly and objectively.

4 Therefore, if any juror knows or has any
5 association with any of the parties, the lawyers or
6 witnesses or if any juror has any knowledge of or has
7 formed any opinion about this case, it should be
8 brought to the Court's attention.

9 First of all, do any of you know
10 Mr. Taylor, Mr. Barber or Ms. Helregel or Ms. Atwood?

11 A JUROR: No.

12 THE COURT: Okay. Everybody is shaking
13 their head. The following people will be called as
14 witnesses in the case.

15 Ms. Atwood?

16 MS. ATWOOD: Oh, sorry, Your Honor.

17 That would be Meagan Vance,
18 Thomas Duenas and Robert Rookhuyzen.

19 THE COURT: Okay. And does anybody have
20 any familiarity with those individuals? Okay. I've
21 been -- had an opportunity to discuss the case with
22 the attorneys. The expectation is this is going to
23 be finished by tomorrow, so you're all here today.

24 Does anybody have anything going on
25 tomorrow, such as surgery that's been scheduled for a

1 long period of time that can't be rescheduled or you
2 have plane tickets to go somewhere on a vacation that
3 the person that you're going with will never forgive
4 you if you don't go?

5 Anybody have anything like that? Okay.
6 I'm not seeing anybody indicate that that's going to
7 be a problem. Lastly, you simply heard the
8 allegations in this case.

9 But having heard those, do any of you
10 feel that your personal views concerning this type of
11 case might affect your ability to be fair and
12 impartial in this case?

13 Okay. I'm seeing also nobody indicating
14 that that's going to be an issue for them. The
15 lawyers are now going to have an opportunity to ask
16 you questions. The purpose of these questions is not
17 to argue the case or to embarrass you, but rather to
18 determine your qualifications to serve on this
19 specific trial.

20 Please respond to the lawyers' questions
21 honestly and sincerely. If you do not understand a
22 question, please ask the lawyer to restate -- restate
23 it for you. If you can't hear something, please make
24 sure that we are aware that you are having some
25 difficulty hearing us.

1 Each side, at the conclusion, is allowed
2 to excuse a certain number of jurors. If you are
3 excused, you should not feel that your attendance has
4 been without value. We need a substantial group of
5 individuals so that an impartial jury can be
6 selected. Your presence is always very important and
7 we appreciate you being here today.

8 Mr. Taylor, you may begin.

9 MR. TAYLOR: Thank you, Judge.

10 Good morning, folks.

11 MULTIPLE JURORS: Good morning.

12 THE COURT: Oh, I'm sorry, I forgot to
13 swear you in. Everybody needs to stand up.

14 THE CLERK: Can I have you raise your
15 right hand?

16 (Prospective jurors sworn, 10:52 a.m.)

17 THE COURT: Okay. Thank you very much.

18 Mr. Taylor.

19 (Voir Dire recorded; not transcribed,
20 10:53 a.m. - 12:09 p.m.)

21 THE COURT: All right. So I'm going to
22 ask our trial jurors to stand up and so that you can
23 be sworn in as trial jurors.

24 THE CLERK: If I could have you please
25 stand and raise your right hand.

1 (Jury duly sworn and empaneled,
2 12:10 p.m.)

3 THE CLERK: Thank you.

4 THE COURT: All right. Go ahead and
5 have a seat. Normally, at this juncture, I would go
6 ahead and give you some preliminary instructions, but
7 I know it's -- we're getting into the noon hour and
8 probably need to get released.

9 So I just want to remind you, you need
10 to be wearing your badges at all times and not to
11 discuss this case at this point. You're -- you don't
12 know anything about the case, and so just go about
13 and have your lunch and we'll see you back here at
14 1:30 and then we'll begin, okay? Thank you very
15 much.

16 And, Marcela, you're going to take them
17 into the jury room, give them some instructions.

18 (The following proceedings were held in
19 open court, out of the presence of the jury,
20 12:11 p.m.:)

21 THE COURT: Okay. So if we can just
22 have the individuals back here at 1:25 --

23 MS. ATWOOD: Mm-hmm.

24 THE COURT: -- we'll get started.

25 MR. TAYLOR: Sounds great. Thank you,

1 Judge.

2 THE COURT: Thank you.

3 * * *

4 (Noon Recess taken at 12:11 p.m.)

5
6 ***AFTERNOON SESSION***

7 (The following proceedings were held in
8 open court, out of the presence of the jury,
9 1:28 p.m.)

10 THE COURT: Thank you.

11 All right. So we're going to go ahead
12 and get started. Just -- just --

13 MR. TAYLOR: I'm just getting water.

14 THE COURT: Okay.

15 MR. TAYLOR: Sorry, Judge.

16 THE COURT: That's all right. Just so
17 you know, Ms. Welch, Juror No. 91, she asked my staff
18 if she could speak with me; that she has some
19 concerns about her employees 'cause she has five
20 employees that aren't able to do their work and that
21 she's feeling anxious.

22 And I just had my staff tell her that
23 she's a member of our jury and that these are things
24 that she should have brought up prior to being
25 selected for the jury. So we're not going to have

1 anything further on that.

2 All right. Ready to begin?

3 MS. ATWOOD: Yes, Judge.

4 MR. TAYLOR: Yes, Judge.

5 THE COURT: Okay. So let's go ahead and
6 bring our jury back.

7 (The following proceedings were held in
8 open court, the jury being present, 1:30 p.m.)

9 THE COURT: Okay. Welcome back from
10 lunch. And as Ms. Welch is doing, if you need to
11 stand at any time, feel free to go ahead and stand.
12 I know it gets difficult to stay -- to remain seated
13 for long periods of time and it won't be a
14 distraction. So if you need to do that, go ahead.

15 COURT'S PRECAUTIONARY INSTRUCTIONS

16 THE COURT: All right. So I'm going to
17 give you some precautionary instructions before we
18 begin. The law that applies to this case will be
19 given to you, in part, by these precautionary
20 instructions.

21 After you've heard the evidence and
22 after the argument of the lawyers, I will give you
23 further instructions regarding the legal rules you
24 must follow in deciding this case. Your duty is to
25 decide the facts from the evidence. You and you

1 alone are the judges of the facts.

2 You will hear the evidence, decide the
3 facts and then apply those facts to the law that I
4 will give you. This is how you will reach your
5 verdict. In doing so, you must follow the law,
6 whether you agree with it or not.

7 To be an effective juror, you must also
8 not be influenced to any degree by personal feelings,
9 sympathy for, prejudice against any party, witness or
10 lawyer or any other participant in this case.

11 The evidence you are to consider in this
12 case consists of the testimony of witnesses and the
13 exhibits received in evidence. Exhibits are physical
14 things, such as photographs and objects. And you
15 will be able to examine the exhibits once you begin
16 deliberation.

17 You may draw any reasonable inferences
18 from the evidence, but you must not engage in
19 guesswork or speculation. You will hear the opening
20 statements from the attorneys and then the evidence
21 will be presented.

22 At the conclusion of the evidence, the
23 lawyers will make their closing arguments to you.
24 The opening statements and closing arguments of the
25 attorneys are intended to help you understand

1 the evidence, although their statements and arguments
2 are not part of the evidence. The fact that a
3 criminal charge has been filed against the defendant
4 is not evidence.

5 The defendant is innocent of any crime
6 unless and until the State proves the defendant's
7 guilt beyond a reasonable doubt. From time to time,
8 a lawyer may make an objection to evidence. I will
9 decide whether or not it is proper, under the law,
10 for you to consider such evidence.

11 Do not speculate about why the objection
12 was made or about why I ruled as I did. If I
13 overrule an objection, the question may be answered
14 or the exhibit received. If I sustain an objection,
15 the question cannot be answered or the exhibit may
16 not be received.

17 Whenever I sustain an objection to a
18 question, ignore the question and do not guess what
19 the answer would have been. Sometimes I may order
20 that evidence be stricken from the record and that
21 you disregard or ignore that evidence.

22 When you are deciding this case, you
23 must not consider any evidence that I've told you to
24 disregard. You must not interpret any statement,
25 ruling or remark I make during this trial as any

1 indication that I have formed any opinion about the
2 facts or the outcome of this case.

3 You and you alone are to decide the
4 facts. You must decide how believable the evidence
5 is and what weight or value you give that evidence.
6 You may take notes, if you wish, during the trial.
7 However, please keep in mind that each party is
8 entitled of the considered decision of each juror.

9 Therefore, during your deliberations,
10 you should not give undue weight to another juror's
11 notes if those notes conflict with your recollection
12 of the evidence. Do not allow your note taking to
13 interfere with your ability to observe and evaluate
14 testimony.

15 And whenever you leave the courtroom,
16 your notes should be left in the jury room. Do not
17 discuss this case during the trial with anyone,
18 including any of the lawyers, parties, witnesses,
19 your friends or your family.

20 That means you are not to communicate
21 with anyone by any means, such as text messaging,
22 e-mail or social media sites. Do not discuss this
23 case with other jurors or look at other jurors' notes
24 until you have begun your deliberations at the end of
25 the case after you've heard all the evidence and the

1 arguments of the lawyers and been instructed on the
2 law that applies to this case.

3 Each of you must keep an open mind
4 throughout the trial and must not attempt to decide
5 this case until you begin your deliberations. Do not
6 make any independent personal investigations into any
7 facts or locations connected with this case.

8 Do not look up any information from any
9 source. Do not communicate any private or special
10 knowledge about any of the facts of this particular
11 case to your fellow jurors. Decide the case only on
12 the evidence received here in court.

13 In addition to any conventional
14 research, you may not use any internet search engines
15 to look up any information about the case, the law
16 that applies to the case or the people involved in
17 the case, including the defendant, the witnesses, the
18 lawyers or myself.

19 And do not use any mapping programs
20 in -- in an attempt to locate or view any of the
21 locations that might be discussed in this case. So,
22 basically, what you're being ordered to do is not to
23 communicate with anyone by any means concerning what
24 you see or hear in the courtroom and to not try to
25 find out more about this case by any means other than

1 what you learn in the courtroom.

2 Decide this case only on what happens
3 here in open court, where both the State and the
4 defense are aware of and have an opportunity to
5 question the sources of the evidence and to address
6 any legal issues that may arise. That is the only
7 fair way in which to decide a case.

8 Also ignore any attempt at improper
9 communication. If anybody tries to communicate with
10 you by -- about this case, tell that person you
11 cannot discuss the case because you're a juror. If
12 that person persists, simply walk away and report the
13 incident to the Court.

14 Your phones and laptops must be turned
15 off while you're in court and while you're in
16 deliberation. And at the end of the trial, I will
17 instruct you about the law that applies to this case
18 and you will begin your deliberations.

19 You will have to make your decision
20 based on what you recall of the evidence. You will
21 not have a written transcript to consult, so I urge
22 you to pay close attention to the testimony as it is
23 given.

24 After you have rendered your verdict or
25 been otherwise discharged by me, you'll be free to do

1 any research you choose and to share your experiences
2 either directly or through your favorite electronic
3 medias. We will now hear the opening statements of
4 the lawyers in which they will outline the evidence
5 as they expect it to be.

6 Ms. Atwood.

7 MS. ATWOOD: Thank you, Your Honor.

8 OPENING STATEMENT

9 MS. ATWOOD: Good afternoon. Today, you
10 are going to meet a young woman named Meagan Vance.
11 Meagan Vance is 26 years old. She's soft spoken.
12 She's a school teacher at West Sylvan Middle School
13 here in Washington County. She's in a committed
14 relationship with her boyfriend. And all in all,
15 she's pretty satisfied and proud with where she's
16 come in life.

17 But today, you're also going to hear
18 what it felt like for Meagan Vance to have her sense
19 of pride, her sense of stability and security and
20 self-esteem crushed at the hands of the defendant
21 when he decided to distribute sexual videos of her
22 across the internet several times to get revenge
23 against her for rejecting him.

24 This is a revenge porn case. So here's
25 the situation: Meagan Vance used to be in a

1 relationship with the defendant. They met each other
2 online in 2009, 2010 and began dating. Their
3 relationship became serious. They were committed to
4 one another.

5 And in -- eventually, in 2012, they got
6 married. So Meagan will tell you, you know, when she
7 entered into this relationship, she was young. She
8 was impressionable. But she loved him. And like any
9 person in a committed relationship, she did what she
10 could to make the relationship work.

11 And it wasn't always easy for them. You
12 see, at the beginning of their relationship, Meagan
13 was living in Ohio studying toward getting her
14 teaching degree while the defendant was living here
15 in Portland. So, as anyone who's been through a
16 long-distance relationship would tell you, it was
17 difficult.

18 But it was especially challenging for
19 Meagan because the defendant was particularly
20 outspoken about his dissatisfaction with her being
21 far away from him. This went beyond someone just
22 missing their significant other while they're gone.

23 The defendant told Meagan that when she
24 left him alone, he -- she was committing sexual
25 abandonment on him. He had needs that she couldn't

1 fulfill while she was spending time away. And so he
2 proposed an idea to her to help him through the times
3 that she was going to be gone studying in Ohio.

4 His idea was that they make some sex
5 videos with each other. And initially, Meagan was
6 apprehensive about this (indiscernible) and she
7 voiced to him her concerns. She was concerned about
8 making the content in the first place.

9 She was concerned about the potential
10 ramifications for her career goals if anything were
11 to happen to those videos. And the defendant
12 understood. He listened. And he told her he did not
13 want to jeopardize her career or her school.

14 He didn't want to jeopardize her in any
15 way. He said that he would keep the videos for
16 personal use only during the times that she was gone
17 back in 2010, 2011 and would not disseminate them to
18 anyone. Now, Meagan didn't have any reason during
19 that conversation --

20 THE COURT: I apologize, Ms. Atwood.
21 Can I please instruct you to use "Ms. Vance"?

22 MS. ATWOOD: I'm sorry, Judge.

23 THE COURT: Thank you.

24 MS. ATWOOD: I will.

25 Ms. Vance didn't have any reason during

1 that conversation or anytime after to have concern
2 about what would happen with those videos. They
3 stayed together. They were in a committed
4 relationship. Their relationship moved forward.

5 Ms. Vance moved back to Portland to be
6 with him. They got married. There was no concern
7 and the conversation did not arise again. So as I'm
8 sure you can gather by this point, the marriage
9 didn't last. This was a person who Ms. Vance loved
10 and trusted with these intimate experiences and the
11 relationship didn't pan out.

12 Things turned south and she filed for
13 divorce in 2013. The divorce was long. The divorce
14 was especially hostile. But, eventually, it was
15 over. Ms. Vance moved to a different house.

16 Ms. Vance finished school, started her
17 job as a teacher. She got into a new relationship.
18 She moved on. But the same could not be said for the
19 defendant. The defendant, as you'll hear during the
20 course of the trial, continued to make contact with
21 Ms. Vance unsolicited, even after the divorce had
22 been finalized.

23 You're going to see a series of
24 messages, texts, e-mails, that sort of thing that
25 span the time immediately preceding the investigation

1 of this case, late 2015 to early 2016.

2 And you're going to notice, when you
3 hear about and have a chance to read through those
4 communications, that the defendant's behavior
5 escalates. At first, he's just texting her saying,
6 "I miss you. I still love you. I still want to see
7 you," no response.

8 Then he's complaining about being sad
9 and lonely. He doesn't know what to do to improve
10 his life. The messages then transition into full-on
11 threats to commit suicide, threats to light himself
12 on fire if she doesn't respond. And eventually, they
13 just become blatant attacks.

14 The defendant blamed her for his current
15 station in life, said that he was homeless and
16 jobless and lonely because of her, that she ruined
17 his life and he had contempt for her because of it.

18 Now, again and again and again,
19 Ms. Vance told the defendant, "Do not contact me. I
20 do not want to talk to you. I do not want anything
21 to do with you." But the defendant was not going to
22 accept rejection. He was not willing to be ignored.

23 So he wanted revenge. He still had the
24 videos that they had made early on in their
25 relationship and he knew exactly what he needed to do

1 with them now that she was in a functioning
2 relationship with a successful job, a new place to
3 live.

4 He had lost everything and he wanted her
5 to experience the same. So he went on a spree,
6 essentially, posting these videos to website after
7 website after website, all of which were pornographic
8 websites, available to any member of the public,
9 without her knowledge or consent.

10 And, keep in mind, the videos that they
11 made were four videos total of them engaged in sexual
12 intercourse, fully naked. You can see Ms. Vance's
13 face in the videos. You can hear her voice. You can
14 hear him refer to her by name.

15 So the defendant posted these videos to
16 numerous websites. His intent at the time,
17 obviously, was to get back at her for causing his
18 current state of despair. And he succeeded. You're
19 going to get to hear from Ms. Vance today about how
20 it felt to find these things on the internet.

21 She's going to tell you what led her to
22 look for them. And that's when we go back to the
23 conversations, to the unsolicited contacts that had
24 been streaming in from the defendant, becoming more
25 and more concerning.

1 Ms. Vance is going to tell you that it
2 got to a point where she thought that he was going to
3 seek retribution against her and she knew him well
4 enough to know that if there were any forum he would
5 choose to exact that kind of revenge, it was going to
6 be online.

7 She'll tell you that, based on her
8 relationship with him, she knew he was a tech-savvy
9 person, heavily interested in technology, definitely
10 knew his way around a computer. So it made sense
11 that this was the forum he selected.

12 So after she had received these
13 concerning e-mails and text messages from him, she
14 decided to poke around on the internet to see if he
15 was saying anything or doing anything in reference to
16 her to try to harm her life.

17 And she almost immediately located these
18 videos. Now, something you're going to learn when
19 you get a chance to hear Ms. Vance's testimony is
20 that she is albino. And that is a serious medical
21 condition, she'll tell you.

22 It affects her life in a lot of
23 significant and difficult ways. She's got some
24 significant medical issues and physical issues that
25 go along with it. And the defendant knew that this

1 was a challenge for her and always had been.

2 So to add insult to injury, when the
3 defendant went on his posting spree on the internet,
4 not only did he betray her consent and her trust, but
5 he decided to do it in the name of a fetish. Every
6 single video that he posted was titled, "Albino
7 Porn."

8 He exploited her medical condition in an
9 effort to harm her. So when she found the videos,
10 she was understandably horrified. She was
11 humiliated. She was embarrassed. She was in fear
12 what this would do to her life, to her job, to her
13 relationship.

14 So her first thought when she found --
15 found them on the first website was, "I'll just
16 contact the website and ask them to take them off."
17 And she did. But then she found them again and again
18 and again on site after site after site.

19 And these weren't anonymous posts. The
20 posts that she was finding on these pornographic
21 websites were associated with user names. They were
22 associated with user profiles. And the user name
23 that was tagged in them was BarberB, the defendant's
24 last name, first initial.

25 She knew that he had done this to her

1 and she knew that he had done it on purpose. And at
2 that point, she felt the need to call law
3 enforcement, so that's what she did. And you're
4 going to get to hear from the officer who took that
5 call.

6 His name is Deputy Duenas. He works for
7 the Sheriff's Office here in Washington County.
8 After taking Ms. Vance's initial statement, he did
9 a number of things.

10 First, he went online himself to see if
11 the videos were where she had found them, if they
12 were attached to this user name, BarberB, if they
13 were, in fact, explicit videos that identified her
14 easily. And he found all of those things.

15 And he's going to tell you about where
16 and how he found the videos because he documented it
17 in screenshots and capturing the videos themselves.
18 So after he had established that what -- what she had
19 told him happened had happened, he tried, of course,
20 to contact the defendant numerous times via the
21 phone.

22 He even tried to go to the defendant's
23 house, but he was being evasive. And that's because
24 instead of responding to law enforcement's attempts
25 to contact him, he was, again, contacting Ms. Vance.

1 After she had already sought law
2 enforcement help and after they had been trying to
3 find him, he contacted her to send her a series of
4 e-mails at work. And you're going to get to read
5 those e-mails during your deliberations.

6 But, at first, he's begging her to drop
7 it, to drop the case, to drop the investigation. He
8 is offering her money to make the investigation go
9 away. He says he will do anything it takes. He
10 promises to get the videos removed.

11 He even sent her a receipt showing that
12 he had requested from one of these websites to have
13 the video removed. But the damage had been done.
14 So, eventually, he was located and interviewed by
15 Deputy Duenas.

16 He was upset about what was going on,
17 but he admitted that he had posted these videos
18 himself on his user name to multiple websites. He
19 admitted that he knew that she had gotten the new job
20 doing what she had always wanted to do.

21 And he admitted that he had done what he
22 did because he was mad at her for ruining his life.
23 He told Deputy Duenas that he wanted her to
24 experience the pain and suffering that he did.
25 That's revenge, folks.

1 Now, the other person you're going to
2 hear from during the course of the trial, his name is
3 Detective Rookhuyzen. He also works with the
4 Sheriff's Office.

5 He jumped on board the case after
6 defendant was initially arrested and did an even
7 further, more thorough search on the internet to make
8 sure he could try to encapsulate the full extent to
9 which these videos were disseminated.

10 You're also going to get a chance to
11 review his findings, hear his testimony and the
12 things that he preserved as evidence for this trial.

13 And one of the things he's going to tell
14 you is that, just a couple months after these were
15 posted by the defendant, by the time that he was able
16 to find them online, they had already been viewed by
17 thousands and thousands and thousands of people.

18 And those were thousands of violations
19 that Ms. Vance never consented to, that she had no
20 control or knowledge over and that she can never have
21 taken down. Now, at the end of the trial, you're
22 going to be given a list of instructions and some of
23 that is going to include the elements of this crime.

24 So you're going to be asked to decide on
25 several counts of Unlawful Dissemination of an

1 Intimate Image. And I want to read to you the
2 elements that you're going to be given.

3 To prove the crime of Unlawful
4 Dissemination of an Intimate Image, the State must
5 show that the defendant knowingly caused images to be
6 disclosed through an internet website, that the
7 images were identifiable images of the victim, whose
8 intimate parts were visible or who was engaged in
9 sexual conduct, that the defendant knew or reasonably
10 should have known that the victim did not consent to
11 that disclosure, that the defendant acted with the
12 intent to harass, humiliate or injure the victim,
13 that the victim was, in fact, harassed, humiliated or
14 injured by the conduct and that a reasonable person
15 in that situation would have felt harassed,
16 humiliated or injured.

17 Those are the elements that you're going
18 to be given at the end of the trial. And I'm
19 confident that in the totality of the evidence that
20 you're going to hear and see, you are going to go
21 back into that deliberation room and think to
22 yourselves, if this isn't a case of revenge porn, I
23 don't know what is.

24 The defendant was angry. He was bitter,
25 and he wanted her to suffer because he was suffering.

1 This has affected her personal life, her professional
2 life and her relationship. And she's going to
3 describe those effects to you.

4 The defendant knew -- not even
5 reasonably should have known -- he knew that she
6 didn't consent to the disclosure of these images
7 because they had a concrete conversation about it
8 when they were created. And the only thing that had
9 happened since then was a nasty divorce.

10 When you go back inside the deliberation
11 room, I'm going to ask you to hold him accountable
12 for what he did, for the things that can never be
13 taken back from this victim. And I'm going to ask
14 you to call revenge what it is and to find him guilty
15 on all counts. Thank you.

16 THE COURT: Mr. Taylor.

17 OPENING STATEMENT

18 MR. TAYLOR: Your job here today is to
19 decide a dispute of facts. We're going to have,
20 apparently, quite a big dispute of facts. Your job
21 is to listen to the evidence and testimony, decide
22 what is credible, what proof you have found, apply
23 those facts to the law and reach a verdict.

24 And in doing so, this trial is going to
25 take you to some strange places. You're going to

1 meet two people who are toxic for each other; two
2 people who were in a relationship, probably never
3 should've been; two people who have a strong tendency
4 to make a mountain out of a mole hill.

5 I'm obviously talking about Mr. Barber
6 and Ms. Vance. To understand this case, you need to
7 understand the history of their relationship. Now,
8 some of this will be duplicative of what Ms. Atwood
9 just told you. They meet in 2009 on an internet
10 dating website, OkCupid.

11 At that time, Mr. Barber is living here
12 in the Portland area. Ms. Vance lives in Ohio. They
13 strike up a conversation pretty quickly, get to know
14 each other, a lot of shared interests. They're very
15 interested in the internet, technology, the nerd
16 subculture. They share some other similarities.

17 They both have issues with their
18 eyesight. As Ms. Atwood mentioned, Ms. Vance is
19 albino. She is nearly legally blind. Mr. Barber is
20 blind in one eye from an ROTC accident in high
21 school. So they have these shared interests and they
22 start chatting.

23 After a while of talking over the
24 internet, their relationship starts to take a
25 romantic turn and they are officially in a

1 relationship. And their relationship is built on a
2 lot of these shared interests, shared goals, things
3 they like to do with their lives.

4 And it was also built on a shared
5 interest in a sexually-progressive lifestyle. They
6 are both young, into sort of liberal,
7 pushing-the-bounds side of things. So together, they
8 get involved in a lot of these activities.

9 They make a lot of pictures and videos.
10 They're chatting over Skype, things like that, all
11 with a nudity, sexual overtone to it. When they're
12 together, they're engaged in a lot of very
13 progressive sexual things: Public sex, going to sex
14 clubs, exchanging these photographs, talking to other
15 folks on the internet to engage in threesomes,
16 foursomes.

17 And these videos that are the subject of
18 this trial play into that lifestyle because, again,
19 you're apparently going to hear disputed facts. And
20 one of the big disputed facts is why those videos
21 were made.

22 You will hear evidence and testimony
23 that what they wanted to do, in part, was to meet
24 other couples to have these sexual encounters with.
25 And as part of this subculture, what people do is

1 they like to advertise themselves.

2 So these couples will meet on Craigslist
3 or OkCupid, these internet sites, and they will chat
4 and they will exchange photos and videos of
5 themselves to sort of advertise what they have to
6 offer. So they begun making these videos.

7 And I want to be clear about some of
8 these videos and what they contain. There's four
9 videos in question. They range in length from about
10 16 minutes long to 21, 22 minutes. They are videos
11 of Mr. Barber and Ms. Vance having consensual sex,
12 clearly nothing coercive or strange about it.

13 They're recorded using Mr. Barber's
14 camera phone. So set up the camera, have sex in
15 front of it and keep it. The whole time, Mr. Barber
16 has always been the one in possession of these
17 videos. You may hear evidence and testimony that
18 Ms. Vance had copies as well.

19 But these were definitely shared by both
20 of them, featuring both of them for shared purposes.
21 And, again, what were those purposes? Obviously,
22 you're going to hear that because they were having a
23 long-distance relationship, they would like to
24 enjoy these videos when they were apart.

25 Second purpose, to disseminate and share

1 with other individuals that they met they were
2 looking to have these group sexual encounters with.
3 And the third reason is because, as part of this
4 lifestyle, they were interested in the idea of making
5 pornography and getting paid for it.

6 So these videos were sort of a demo
7 reel. And you will hear testimony that forays were
8 made into finding out whether they could monetize
9 their sexuality. So they keep living this lifestyle.
10 Again, they met in 2010, these videos were made in
11 early 2011.

12 Eventually, Ms. Vance moves out here.
13 They get married on 2012. As Ms. Atwood said, it
14 isn't a good marriage; it's short. Neither of us are
15 here to relitigate their divorce. However, there are
16 some things that occurred during this time that will
17 bear on this case.

18 So as Ms. Atwood said, it was a long,
19 drawn-out divorce. It was ugly. A lot of things
20 were said over the year or so that it was going on.
21 There were accusations of a number of varieties. And
22 you're going to hear some sort of shocking things
23 about some of these accusations.

24 At one point, an accusation of rape is
25 floated. Now, Ms. Vance later repudiates this. The

1 evidence and testimony you will hear, what I believe,
2 is that this accusation arises from the fact that
3 while they were dating, there was consumption of
4 alcohol and prescription pills by one or both
5 parties.

6 And, thus, they would have sexual
7 intercourse while they were intoxicated after taking
8 prescriptions and then consuming alcohol, the theory,
9 obviously, then being that if a person is
10 intoxicated, they may not be able to consent to
11 sexual relations and, therefore, it would be a
12 lack-of-consent theory.

13 These accusations are floated. That is
14 obviously an ugly or serious allegation. They're
15 later repudiated and nothing comes of it. Other
16 accusations are the typical divorce accusations.
17 They get into it about money, issues with the
18 apartment, issues with shared property and it gets
19 pretty ugly.

20 You're going to hear evidence of
21 testimony, again, about that making a mountain out of
22 a mole hill. Disputes over money and somebody owing
23 a gas bill turn into, "I'm going to get a lawyer and
24 I'm going to go after you for Fraud and I'm going to
25 get you thrown into jail," and "No, you're

1 blackmailing me."

2 So to be all fair, these accusations go
3 both ways. But they're at each other's throats
4 constantly. Divorce goes through in 2015. Things
5 get quiet. They don't talk for a little bit. And
6 then as 2015 progresses, they get back in contact.

7 And, again, picking up on some of the
8 things Ms. Atwood had to say, their lives go in
9 different directions. Ms. Vance's life generally
10 improves. She finishes school, gets a job, meets a
11 new guy. Her life's going well.

12 Mr. Barber is not so lucky. Part of it
13 is the divorce. He is subject to massive
14 garnishments of his wages, so any job he does get,
15 he's losing a great deal of his money. He has
16 difficulty holding jobs. He ends up losing his house
17 and he becomes homeless for a while.

18 And you'll hear that Mr. Barber -- and
19 Ms. Vance as well -- are both people who are
20 interested in the big picture. What am I going to do
21 in the world? How can I help people? And by 2015,
22 Mr. Barber is feeling like he doesn't have much to
23 offer the world. He's starts getting very depressed.

24 Now, during 2015, there's also some
25 conversation between them. And, again, you'll hear

1 evidence and testimony about this. A lot of it is
2 chatting and e-mails and things like that. And it's
3 hot fish, cold fish.

4 One month it's, "I don't want to talk to
5 you. Don't ever speak to me again." A few months
6 later, for example, July of 2015, Ms. Vance is
7 initiating conversations, long and drawn-out pages
8 and pages of chat with Mr. Barber.

9 An important fact arises during a July
10 of 2015 chat. You see these videos, they'd sort of
11 fallen by the wayside at this point. You're not
12 going to hear any evidence that during the divorce,
13 any mention was made of them, any discussion was had,
14 if anyone laid out any rules about, "Oh, remember
15 those videos?"

16 No discussion or anything like that,
17 they just sort of fell in the background. And where
18 they were -- or one of the places they were -- was on
19 Mr. Barber's FTP server, which, for those of you who
20 are not technologically savvy, it's kind of like
21 cloud.

22 And it's an older version of what we
23 think of now as a cloud where you upload whatever
24 content you have, your files, your photos, videos,
25 and you can keep them there. And so they're just

1 floating up there in the cloud with some of his other
2 stored stuff.

3 And, apparently, in July of 2015,
4 someone tries to hack into this cloud. And there
5 were some allegations or threats made that people
6 were going to dox this pornography.

7 And what doxing means -- again, taking
8 you in this internet rabbit hole -- the idea of
9 doxing is when somebody hacks into your computer or
10 your cloud or something like that and takes your
11 photos, videos, whatever and then spreads them around
12 on the internet.

13 And somebody attempted to dox
14 Mr. Barber. And in this conversation with Ms. Vance,
15 he tells her, "Did you hear that somebody tried to
16 dox our porn?" And she says, "Yeah, I heard
17 something about that," doesn't seem to make any big
18 deal about it, completely unconcerned at that time.

19 Things go on. The rest of 2015 doesn't
20 go well with Mr. Barber. No job, he loses his home,
21 extremely depressed. His depression takes him to the
22 point where he is considering ending his own life.

23 In January, he goes to OHSU, suicidal
24 ideations, spends some time, January through March,
25 working with a mental health service, trying to get

1 himself afloat, but he still has no job, no place to
2 live, no hope and he's kind of come to the end of
3 his line.

4 In April, things get really bad. He has
5 made a plan to kill himself. That's really all he
6 can think of. And he thinks to himself, "Who's going
7 to care if I die? What mark am I going to leave on
8 this world?"

9 'Cause all he's wanted to do is to
10 (indiscernible) technology, write software and things
11 like that, be remembered, make some difference. He
12 knows that his server and all that is going to crash
13 when he stops paying the bill after he kills himself,
14 so he wants to leave his mark.

15 So he gets on line. He gets on
16 Facebook. He posts all of his personal photos from
17 his whole life, you know, when he was a kid and grown
18 up, posts all of his photos up there so they'll stay
19 there forever.

20 He gets on this website called GitHub,
21 which is a technology sharing website. He posts all
22 of his code he's ever written and everything he can
23 just give to the world. And as he's going through
24 these, he comes across these videos.

25 And he looks at them and he -- of

1 course, he remembers what they were and why they were
2 made. And he looks at them and he says, "And this is
3 the last time I remember being happy," when he was
4 with Ms. Vance because, this whole time, he has
5 wanted to get Ms. Vance back.

6 You're going to see all these e-mails,
7 "I wish we could spend time together. I wish you
8 would take me back. I wish we were spending
9 Christmas together." They're sad. He wants her
10 back. So he takes those videos and that's part of
11 the mark he wants to leave on this world.

12 It's part of a lifestyle he has lived
13 with Ms. Vance, that sexually-adventurous lifestyle.
14 And he decides he's going to throw these videos into
15 that sea of amateur pornography that lives in the
16 internet 'cause you'll hear evidence and testimony
17 that, for those of you who don't already know,
18 amateur pornography is a massive part of the
19 internet, the pornography that people enjoy on the
20 internet.

21 And he throws them out there in this
22 sea. You're not going to hear any evidence and
23 testimony that he sent it to anyone, that he shared
24 it on Facebook or that it came into their sphere of
25 friends or people they know, nothing like that.

1 He just threw it out there and
2 (indiscernible). And he's moving forward with his
3 plan to kill himself. And then all of a sudden, the
4 skies open up and he gets this amazing job at Intel
5 doing exactly what he wanted to do. And this is in
6 late April.

7 Decides not to kill himself. Goes to
8 work. Starts working a ton. Way overtime, hours and
9 hours a week and he just forgets about these things.
10 They're just sitting there on the internet, not doing
11 anything.

12 Time goes on. He sends Mr. Vance --
13 excuse me. He sends Ms. Vance more e-mails, updates
14 on his life. He says, "Good news. I have gotten a
15 real job. I'm doing all this work. I'm so proud of
16 it. I'm so happy. I wish I could share it with
17 you."

18 Nothing threatening or harassing in
19 those e-mails, just more talk about how he misses
20 her. He wishes they were back together. He has
21 reservations about their relationship, how he wishes
22 they were together.

23 Brings us to June -- late June.
24 Ms. Vance somehow discovers these videos, whether
25 it's the manner which Ms. Atwood said -- however, she

1 finds these videos online. She is obviously less
2 than pleased.

3 She's a teacher. She doesn't want those
4 things out there. And this dude that she's tried to
5 get rid of this last year apparently put them up
6 there. So first thing she does is get a lawyer.
7 Lawyer tells her, "Call the police."

8 Calls into dispatch, said he's got this
9 revenge porn fix. Deputy Duenas gets assigned to it.
10 He looks at it as this brand-new law. He's going to
11 check it out. Talks to Ms. Vance, tries to talk to
12 Mr. Barber, has trouble getting a hold of him because
13 he's working so, so much.

14 Finally gets ahold of Mr. Barber.
15 Mr. Barber says, "Whoa, whoa. Can we resolve this
16 civilly? I didn't know. I'm sorry. I -- I
17 understand that she's bent out of shape. I
18 understand what you're saying. What can I do?"

19 Tries to take the videos down, all these
20 types of things, tried to explain his side of the
21 story. Deputy Duenas is not having it. Eventually,
22 after several weeks, he makes a decision to arrest
23 Mr. Barber, asks Mr. Barber to turn himself in.
24 Mr. Barber does. Here you are today.

25 So, folks, what your job is going to be

1 is to hear the testimony, look at the evidence,
2 decide which facts have been proven to you and apply
3 them to the law. And this is a somewhat lengthy law.

4 There are numerous elements. The State
5 must prove each and every one of those elements
6 beyond a reasonable doubt. Some elements will be in
7 dispute, some will not be. To have a complete crime,
8 the State, obviously, has to prove all of those
9 elements beyond a reasonable doubt.

10 For example, there isn't a lot of
11 dispute that these were videos featuring the two of
12 them, that you can see them in the videos. If
13 everything goes according to plan, you guys won't
14 even need to view these videos during this trial.

15 You may see a short video or a
16 photograph, but you're not going to have to sit here
17 and watch these. We don't dispute that.

18 Other elements are going to be seriously
19 in dispute, his intent, consent, 'cause what you're
20 going to hear is that there is certainly a dispute of
21 fact about what, if any, discussions were had about
22 these videos, how they'd be shared, knowledge of how
23 they were being shared in the past, knowledge about
24 the people sharing them and what that would lead
25 Mr. Barber to reasonably believe, if he even

1 considered (indiscernible).

2 You're going to have questions about
3 whether someone can expect privacy in this type of
4 video, one that has already been shared, one that
5 features two people, one that was made by somebody
6 else. These are all questions you'll need to
7 consider.

8 But the biggest and, perhaps, most
9 important issue in this case is that intent. You
10 will not see evidence or testimony that when Ben
11 Barber sat down, put these videos on a website, that
12 he did it because he hates Ms. Vance, that he wanted
13 revenge.

14 He put them up there because he was
15 going to kill himself and that was the last time he
16 remembered being happy in this world. There was no
17 malice in his heart when he put these videos up.

18 And if Ms. Vance takes offense to that,
19 as she very clearly will, Mr. Barber does regret that
20 today. But it wasn't on his mind when he put these
21 videos up. So at the end of this trial, I'm going to
22 come back and ask you to find him not guilty. Thank
23 you.

24 THE COURT: Thank you, Mr. Taylor.

25 All right. Ms. Atwood, are you prepared

1 to call your first witness?

2 MS. ATWOOD: Yes, Judge. The State
3 wishes to call Meagan Vance.

4 THE COURT: Thank you.

5 THE CLERK: If I could have you remain
6 standing and raise your right hand.

7 MEAGAN VANCE

8 Was thereupon called as a witness on behalf of the
9 State; and, having been first duly sworn, was examined
10 and testified as follows:

11 THE CLERK: Thank you. You may be
12 seated.

13 For the record, if I could please have
14 you state your name, spelling first and last.

15 THE WITNESS: My name is Meagan Vance.
16 My first name is spelled M-e-a-g-a-n. My last name
17 is spelled V-a-n-c-e.

18 THE COURT: You may inquire, Ms. Atwood.
19 Thank you.

20 DIRECT EXAMINATION

21 BY MS. ATWOOD:

22 Q Good afternoon, Ms. Vance. So I'd like to
23 start off just by asking you a couple questions about
24 yourself.

25 A Mm-hmm.

1 Q Where do you live?

2 A I live in Washington County.

3 Q Is that in Beaverton or --

4 A It's in Portland.

5 Q -- or where?

6 A It's almost Beaverton, but --

7 Q Okay.

8 A -- kind of in that in-between area.

9 Q And how long have you lived there?

10 A I have lived in different parts of
11 Washington County in the past year.

12 Q Okay. How old are you?

13 A I'm 26.

14 Q And what do you do for a living?

15 A I am a special education teacher.

16 Q And where do you teach?

17 A I teach at West Sylvan Middle School.

18 Q When did you start that job?

19 A I started that job in August of 2015.

20 Q What are the ages, roughly, of the students
21 that you work with?

22 A I teach middle school. I'm a seventh and
23 eighth grade teacher.

24 Q Okay. So I want to ask you a couple of
25 more personal questions about your health. So you

1 are albino, right?

2 A Yeah.

3 Q Can you just explain briefly to the jury
4 what that means?

5 A That basically means that I am visually
6 impaired. I am legally blind. I have some
7 sensitivity to light. You might see me twitching a
8 bit with my eyes because the light kind of affects my
9 eyes. I can't really see anyone's faces right now.
10 So I might not be making the best eye contact. So
11 that's really how it affects me.

12 Q And has this been something that you've had
13 to deal with in your day-to-day life for your
14 whole life?

15 A Absolutely. It's genetic, so from birth,
16 it's there. It really impacts my life. Because I do
17 teach special ed, it's a part of what I've gone
18 through, my students are going through. And I really
19 connect with them on that.

20 Q Okay. So I want to shift gears and get
21 into some questions about your involvement in today's
22 case. How do you know Benjamin Barber?

23 A We were married.

24 Q And do you see him in the courtroom today?

25 A What do you -- I don't understand

1 your question.

2 Q It's okay. Yeah, I'm -- never mind. When
3 did you meet Mr. Barber?

4 A We met online in the fall of 2010.

5 Q Okay. And what website was that on --

6 A It was on --

7 Q -- do you recall?

8 A -- OkCupid.

9 Q And that's a dating website?

10 A Yeah, it's a dating website.

11 Q Okay. So how did you guys start talking?

12 A We casually just started talking online.

13 I was going to school in Ohio. I was thinking about
14 graduation. I didn't really know what I wanted to do
15 with my life.

16 So I thought if I could talk to people
17 around the country and the world, maybe I can know
18 where I'm going in life a little bit more. So we
19 just got to talking and really hit it off.

20 Q And how far along were you in college at
21 that point?

22 A I think I had just started my junior year
23 in college.

24 Q And where was he living at the time?

25 A He was living in Portland, Oregon.

1 Q Okay. So how long did you guys chat before
2 your relationship became more serious?

3 A I'd say about two to three months or so.
4 We talked for a while and then he decided he was
5 going to visit a few months after we had started
6 talking. And we were basically -- I think it was
7 pretty much established that we were dating at the
8 point that he had visited me.

9 Q Okay. Do you recall, generally speaking,
10 when that visit happened?

11 A It was in the fall of 2010, I think
12 October. It -- it was a long time ago, so I think it
13 was around October, November --

14 Q Okay.

15 A -- it -- colder fall.

16 Q Was that -- and that was him visiting you
17 in Ohio?

18 A Yes.

19 Q Okay. At any point during the time that
20 you guys were long distance, did you visit him in
21 Portland?

22 A Yeah. I visited him on every single break
23 that I had, so my first break was in December of
24 2010.

25 Q Okay. Let's talk a little bit more about

1 these visits. Was it -- generally speaking, was it
2 difficult being in a long-distance relationship for
3 you two?

4 A It was difficult. I -- I was excited
5 because I didn't really connect with anyone that I
6 had lived with. I think it was harder on him, but it
7 definitely is harder than a typical relationship.

8 Q And what did you guys do to keep in touch?
9 How did you contact each other? Phone? Internet?

10 A A lot of phone contact, mostly Skype
11 because we -- you know, phone calls aren't that great
12 for talking for several months. If you're dating,
13 you want to see each other's faces. You want to
14 connect with each other.

15 So it's difficult to have that connection
16 when you're separate. So you have to try to do what
17 you can to create a romantic relationship long
18 distance.

19 Q Sure. Did -- during the time that you guys
20 were long distance, did the defendant ever talk to
21 you about his feelings about being long distance or
22 any struggles he was having with that?

23 A He had been in a long-distance relationship
24 before, he had told me, so he said it is a very
25 difficult thing that he doesn't like long term. He

1 was willing to do it.

2 As the relationship progressed, it was
3 more -- more pushing and demanding as far as, "We
4 cannot continue a long-distance relationship. It has
5 to be -- we have to live together."

6 Q How long did things progress before it got
7 to that point?

8 A Until about spring of 2012, which was
9 around the time I was graduating. I had some
10 difficulty with graduation, so he was very intrusive
11 and demanding as far as me getting my teaching degree
12 so I could move with him. He didn't want me to be in
13 school in Ohio any longer.

14 Q Okay. So did he ever explain to you
15 the reasons why the long distance was so difficult
16 for him?

17 A The only conversation that I really
18 remember is just the sexual difficulty because when I
19 was visiting in December of 2010, he had expressed
20 that -- you know, when I was leaving, I wouldn't --
21 we wouldn't be able to have sex.

22 And it was difficult for him. I think he
23 also missed just having female companionship of some
24 sort, so I think he had female friends that he'd
25 spend time with or hang out with when I was gone.

1 Q So did you guys -- or did he offer any kind
2 of solution to help him, I guess, survive the bits of
3 time when you were away?

4 A Yeah. It -- I mean, it was very clearly
5 the videos that were made in 2010. He -- he was very
6 upset at that point. And he just was very angry that
7 I was leaving.

8 And he -- he felt kind of abandoned with
9 the relationship because we would visit each other
10 for a month and then I was going to go away. So he
11 had expressed that to me, yeah.

12 Q Do you roughly remember when that
13 conversation happened?

14 A It was in December of 2010.

15 Q And was he the person to bring up the idea
16 of making the videos?

17 A Yes, absolutely. He pretty much said,
18 like, "We -- we need to do this," so that he could
19 feel sexually satisfied.

20 Q How did you initially feel about that
21 request when he made it?

22 A I was pretty nervous. We were talking
23 about all these, like, sexually-explorative type of
24 things. But it was -- I just didn't think it was an
25 actually serious discussion.

1 So when he had asked that we actually make
2 videos, it was stressful for me because I -- I loved
3 him very much, but we didn't know each other that
4 long. It had only been a few months at that point.

5 So I was -- I didn't exactly feel
6 comfortable with it. But this was someone that I
7 really loved and cared about like I hadn't had
8 before. And I felt like it's something I had to do.

9 Q And you were fairly young when you entered
10 into this relationship, right?

11 A Yeah, I was 20.

12 Q And how much relationship experience had
13 you had at that point in terms of long-term, adult
14 relationships?

15 A That was my first adult relationship. I
16 had some relationship that ended in my senior year in
17 high school and I had just focused on studying after
18 that. So this was my very first adult relationship.

19 Q So did you voice to him any specific
20 concerns that you had about making the videos or what
21 would happen with the videos?

22 A We had a discussion because, early on, we
23 were talking about being together long term and what
24 was the best for both of us. He really wanted me to
25 be a teacher. I wanted to be a teacher.

1 And we had decided that anything that we do
2 is just between us because we didn't want anything
3 floating around that would jeopardize my career.

4 Q How -- what -- what phase, I guess, of
5 your work toward your teaching degree were you at
6 at that point?

7 A I was in my junior year in college at that
8 point, so I was at the point where it was getting
9 serious. I'd taken all of my prerequisite classes
10 and I was actually being in the classroom for the
11 first time, working with kids.

12 My name was attached to my teaching and
13 everything, so that's the first time when I was
14 actually really in the community and practicing
15 teaching at that point.

16 Q And so you had several concerns that you
17 voiced to him. What led you to make the videos
18 anyway?

19 A He -- that he had agreed. He wanted me to
20 be successful just as much as I did. It was -- it
21 felt very loving. I was nervous about it, but he was
22 five years older than me. I had trusted him like he
23 knew what he was doing.

24 And it was very much agreed that this
25 was between us. We both wanted each other to be

1 successful, so there would be no way that he would
2 want to jeopardize that.

3 Q And when --

4 A I had no question.

5 Q Sure. And when did you guys actually
6 record the videos?

7 A We recorded the videos in December of 2010.

8 Q Do you recall where the videos were
9 recorded?

10 A Yeah. They were taken in his bedroom of
11 his apartment at the time.

12 Q Where was he living, do you remember?

13 A Southwest Portland.

14 Q Did anybody else besides the two of you
15 participate in the creation or production of the
16 videos?

17 A No.

18 Q How did you, personally, feel while you
19 were making the videos?

20 A I -- I felt uncomfortable. I was very
21 nervous about it. I didn't particularly enjoy it as
22 much as being intimate with someone without recording
23 video. So I -- I didn't feel particularly happy
24 about it, but I knew I was doing something for my
25 partner.

1 Q Once the videos were made, what happened
2 with them?

3 A I -- I didn't hear anything from them at
4 that point. I don't --

5 Q So were they stored on disk or a drive? Do
6 you recall anything about that?

7 A I just assumed they were stored in his
8 phone. Several years later, I found them on his
9 website, but I -- I just assumed he was using them as
10 he said he would to remember memories that we had had
11 and to have sexual satisfaction himself.

12 Q Did you, personally, possess the videos at
13 any point?

14 A I -- no, I didn't. I didn't really have an
15 interest in having them, so --

16 Q And beyond the first round of conversations
17 you had about your concerns, did you revisit the
18 conversation at any point after that time?

19 A You mean later in our relationship --

20 Q Yeah.

21 A -- did we talk about it? No.

22 Q So to be clear, did you ever give him an
23 indication that you'd changed your mind about what
24 could happen with the videos?

25 A Absolutely not. It was very clear between

1 us that I'm going to be a teacher. We don't want
2 these videos out there, especially 'cause I do look
3 very unique and -- absolutely not. You know, we both
4 wanted to be successful together. Why -- why would
5 we want to share that and jeopardize my career?

6 Q So I want to turn back a little bit to fill
7 in the rest of the chronology of your relationship.
8 So correct me if I'm wrong, but you said you met in
9 2010 online, right?

10 A Yeah.

11 Q And in 2010 and 2011, you were in Ohio
12 while he was here?

13 A I visited December of 2010 to January 2011.
14 I visited summer 2011 and then I came back December
15 2011.

16 Q Okay. Okay. So at what point did
17 marriage come?

18 A December 2011.

19 Q And was that before you had officially
20 moved back here?

21 A That was before I'd officially moved back.
22 I had to go back to Ohio to do student teaching and
23 then I came back after that.

24 Q How long were you two married before you
25 filed for divorce?

1 A So I -- we were married from December 2011
2 until October 2013, is when I officially left our
3 home and didn't come back --

4 Q Okay.

5 A -- and had pursued divorce.

6 Q How long was the divorce pending before it
7 was finalized?

8 A It was finalized April of 2015. It -- it
9 didn't need to be. It could've happened in two
10 weeks, but it lasted that long.

11 Q And briefly speaking, how would you
12 describe the divorce?

13 A It was very -- a nasty divorce. I think
14 that's one thing him and I can agree upon. It was a
15 very nasty divorce. It had no reason to be nasty.
16 I just wanted it to be over. I was okay with being
17 friends and just not being together. It -- it was
18 not -- he didn't feel that way.

19 Q And since the divorce was finalized, have
20 you gotten into a new relationship?

21 A Yes, I have.

22 Q And how long have you been in that
23 relationship?

24 A Since June 2014.

25 Q Okay. And at what point did you -- I may

1 have already asked you this. At what point did you
2 start working at West Sylvan?

3 A August of 2015.

4 Q Okay. So I want to ask you some questions
5 about events leading up to this investigation. You
6 just testified that things were finalized in the
7 divorce in 2015. Between then and now, did your
8 relationship with the defendant change at all? Did
9 things improve? Did things get worse?

10 A No, no getting better. A couple of times,
11 I'd reached out and said, "Hey, can we be friends?"
12 But it was just -- it was a very vindictive
13 situation. It was toxic. I -- I loved him and I
14 wanted him to continue his life without me because
15 our life together was very toxic. So I just exited
16 myself and tried to make the best of my life.

17 Q Okay. So you mentioned that you exited
18 yourself. After you had stopped contact with the
19 defendant, did he continue trying to contact you?

20 A Yeah.

21 Q So I -- well, first, what avenues would he
22 use to make contact with you during 2015, 2016?

23 A E-mail, phone call. I'd block him on
24 Facebook and he'd get another account and contact me,
25 voicemails. I eventually just changed my phone

1 number. And I thought if I didn't respond after
2 telling him I didn't want to hear contact from him
3 that, eventually, he would just move on.

4 Q Did that happen?

5 A No.

6 Q So I would like to show you a couple
7 of documents.

8 MS. ATWOOD: Permission to approach the
9 witness, Your Honor?

10 THE COURT: Yes, Ms. Atwood.

11 BY MS. ATWOOD:

12 Q So I'm going to show you two documents.
13 The first one is what I've labeled as State's
14 Exhibit 2. Do you recognize this document?

15 A Yeah.

16 Q Is this a copy of a text message -- or two
17 text messages that you received from the defendant?

18 A Yeah.

19 Q Can you tell when the text messages were
20 sent to you.

21 A Well, the first one talks about
22 Thanksgiving plans and this was either the day of
23 Thanksgiving of the day before.

24 The second one says, "Merry Christmas.
25 Miss you, Ben." And that was Christmas. It looks

1 like it says December 24th and November 26th.

2 Q Okay. And that was of 2015?

3 A Yeah.

4 Q And are these accurate copies of text
5 messages that you received from him?

6 A Yeah.

7 MS. ATWOOD: Your Honor, we would offer
8 State's Exhibit 2.

9 MR. TAYLOR: No objection.

10 THE COURT: Thank you. That'll be
11 received.

12 (State's Exhibit No. 2 received.)

13 BY MS. ATWOOD:

14 Q So I'm also going to show you what I've
15 marked as State's Exhibit 3. This is a two-page
16 document. Do you recognize this document?

17 A Yeah.

18 Q Are these additional text messages that you
19 received from the defendant?

20 A Yeah.

21 Q And what's the general context of these
22 messages?

23 A He -- he was -- he was texting me and
24 saying he doesn't want to burden me anymore. He
25 wants to leave this world. And he's -- he's just

1 saying that he doesn't know if he has a place in this
2 world. He's considering setting himself on fire.
3 You know, these were very hard to receive.

4 Q (Indiscernible). Are these accurate copies
5 of texts that you remember receiving from him?

6 A Yeah.

7 MS. ATWOOD: Your Honor, we'd offer
8 State's 3.

9 MR. TAYLOR: No objection.

10 THE COURT: Thank you. It'll be
11 received.

12 (State's Exhibit No. 3 received.)

13 BY MS. ATWOOD:

14 Q Did you respond to any of these text
15 messages that he was sending you?

16 A No, I didn't. With these -- the suicide
17 texts, he had also called me around that time. And I
18 had responded to the call and then I -- I hung up and
19 I -- I called a friend and asked for their advice.

20 And they're, like -- they just said, you
21 know, "You just need to move on. He'll take care of
22 himself." So then I just didn't respond from that
23 point.

24 Q Sure. So I'm going to continue showing you
25 some documents if that's okay.

1 A Mm-hmm.

2 Q Do you remember providing a series of
3 messages and -- and related correspondence to law
4 enforcement relating to this case?

5 A Yeah.

6 Q Okay. So the first item I'm going to show
7 you is what I have labeled State's Exhibit 4.

8 A Okay.

9 Q Do you recognize that item?

10 A Yeah.

11 Q Is that a copy of a message that was sent
12 to you from the defendant?

13 A Yes.

14 Q And is that one of the messages that you
15 later turned over to law enforcement?

16 A Yeah.

17 Q Is it true and accurate to your
18 recollection?

19 A Yeah.

20 MS. ATWOOD: Your Honor, we would offer
21 State's Exhibit 4.

22 MR. TAYLOR: No objection.

23 THE COURT: Thank you. It'll be
24 received.

25 (State's Exhibit No. 4 received.)

1 BY MS. ATWOOD:

2 Q And I'm also going to show you what has
3 been marked as State's Exhibit 5 and State's
4 Exhibit 6.

5 A Okay.

6 Q Do you recognize these documents?

7 A Yeah.

8 Q Are they Facebook messages or copies of
9 Facebook messages that were sent to you from the
10 defendant?

11 A One's a Google message and one's -- these
12 are Facebook messages and I remember receiving these.

13 Q And do they accurately reflect the things
14 that you received from the defendant and said to the
15 defendant?

16 A Yes.

17 MS. ATWOOD: Your Honor, we'd offer
18 State's Exhibits 5 and 6.

19 MR. TAYLOR: No objection.

20 THE COURT: Thank you. They'll be
21 received.

22 (State's Exhibit Nos. 5 and 6 received.)

23 MS. ATWOOD: Thank you.

24 BY MS. ATWOOD:

25 Q Now, in State's Exhibits -- I want to draw

1 your attention to Exhibits 5 and 6. There are some
2 stickers on the back of them.

3 A Okay.

4 Q (Indiscernible) records.

5 A Can you help me find them?

6 Q Yeah. Let's see, this is 6 and this is 5.

7 A Okay.

8 Q So in reference to State's Exhibits 5 and
9 6, I want to draw your attention to your responses to
10 the defendant. Did you respond to him during those
11 conversations?

12 A Yeah.

13 Q And what was the nature of your responses
14 to him?

15 A "I'm keeping records of these
16 conversations. Do not contact me. I don't want to
17 hear from you. Please don't contact me again."

18 Q Okay.

19 A "And I told you numerous times not to
20 contact me. Don't contact me again."

21 Q And when were these messages sent?

22 A One, he had sent in February 20 --
23 February 22nd, 2016. I had responded February 27th.
24 They automatically went to my trash folder, so I
25 didn't see them right away. And the other one, it

1 looks like I sent on March 20th of 2016.

2 Q And what are the -- what's the gist or the
3 context, generally, of the defendant's messages to
4 you?

5 A In -- they are, basically -- I'm sorry,
6 I forgot the question. I was trying to figure out
7 which piece of evidence I was looking at. Could you
8 repeat it?

9 Q No worries. What is the context of the
10 defendant's messages to you?

11 A Just that he's trying to get his life
12 together, he hopes we can talk again soon, that he's
13 trying to get on Social Security disability. He
14 referenced me in some sort of application for that.

15 Q Okay. So two more exhibits to show you.
16 These are what I have marked as State's Exhibits 7
17 and 8.

18 A Okay.

19 Q Do you recognize these documents?

20 A Yeah.

21 Q Are these copies of e-mails that were sent
22 to you from the defendant that you provided to law
23 enforcement?

24 A Yeah.

25 Q Are they accurate copies of the messages

1 you received?

2 A Yeah.

3 MS. ATWOOD: Your Honor, we'd offer 7

4 and 8.

5 MR. TAYLOR: No objection.

6 THE COURT: Thank you, Mr. Taylor.

7 They'll be received.

8 (State's Exhibit Nos. 7-8 received.)

9 BY MS. ATWOOD:

10 Q So in drawing your attention to those two
11 messages, you can see that the defendant is
12 discussing a lot about technology and computers and
13 things like that. In your relationship with him, did
14 he have these interests? Was he interested in
15 technology and computers, that sort of thing?

16 A Yeah, absolutely. Yeah.

17 Q To what extent?

18 A Anything he did was involving computers
19 and technology. We were talking about making special
20 education devices together for people with
21 disabilities. It was -- work was a big part of both
22 of our lives and it was very fun and exciting. So
23 that's-- basically, our lives were revolved around
24 that and his was technology.

25 Q Okay. So looking at these exhibits as a

1 whole, to your recollection, how -- how did it make
2 you feel to receive these kinds of repeated contacts
3 from the defendant?

4 A Just for 7 and 8 or all of the messages?

5 Q All of them.

6 A At first, it was a little upsetting and
7 just, you know, he's having difficulty moving on.
8 I'll just ignore it. And then it just -- it -- it
9 felt more stressful the more I got the messages
10 because they'd go from my school e-mail to my phone
11 and calls.

12 And when I changed my number, it went to
13 my work e-mail. And once it hit my work e-mail, I
14 was very worried because it -- it was obvious he was
15 looking up my information.

16 I'd had never given him my work information
17 or e-mails. So increasingly, it became more
18 stressful and less of a normal breakup and more of
19 this is a scary situation.

20 Q So why did you feel like you might need to
21 seek legal or law enforcement help?

22 A When I had found the first videos, I
23 thought, okay, I can make a copyright claim. I can
24 get rid of these. It was very stressful to see. But
25 throughout this relationship, I've become good at

1 just kind of separating that -- that overwhelming
2 feeling and shock into just do what I need to do.

3 And so when I received -- I saw more
4 videos, I thought this was more than what I can
5 handle, I should probably try to talk to my lawyer I
6 had for my divorce to just see if she could offer me
7 any help.

8 Q Okay. So let's sort of take those things
9 one by one. You mentioned when you found the first
10 videos. What led you to search the internet for
11 things having to do with you?

12 A To search for the first videos or --

13 Q Yes --

14 A -- the other ones?

15 Q -- the first ones.

16 A These e-mails I had received via my work
17 e-mail was after several months of not responding to
18 him. This was towards May -- end of May. And I
19 thought that was a big change in his contact. He was
20 contacting me from my work.

21 And from previous difficulties, in April of
22 2015, we got our divorce. He didn't allow me to come
23 get my stuff, so I had to get a sheriff's permission
24 to enter his home to get my -- my stuff back.

25 And when we had done that, he had told me,

1 "I'm going to make a website called meaganvance.net
2 and I'm going to show all of your transgressions and
3 ruin you because you have ruined me." And from --

4 Q When -- when did that happen? I'm sorry.

5 A That happened maybe April or May 2015. It
6 was after the divorce was finalized and the next
7 steps was to just get our stuff.

8 Q So why did you think -- why did your mind
9 jump to looking for the sexual videos?

10 A I had just done a search of my name and I
11 found the first videos linked to my name.

12 Q Where were --

13 A My --

14 Q -- they located?

15 A They were located on a porn website
16 called xHamster.

17 Q So when you Googled your first and last
18 name, is that what happened?

19 A Yeah.

20 Q Okay. So did you click on the videos, go
21 to xhamster.com?

22 A Yeah.

23 Q And what did you find there?

24 A I found a profile he had had before and I
25 found our videos. Yeah. It was very clearly me and

1 us and it brought -- brought back memories and it
2 was -- it was overwhelming to think that anyone could
3 just click on it and look at it. And it was attached
4 to my name, so -- and I guess I was just kind of in
5 shock.

6 Q Do you recall how many of the videos he had
7 posted to that particular site?

8 A Four, one of each of them.

9 Q Okay. So what did you do when you found
10 them?

11 A My lawyer, when I was going through the
12 divorce, said this might happen 'cause he had them
13 hidden on his website before that. And if they did,
14 I could always try to file a DMCA copyright claim and
15 claim that this is part of my copyright and try to
16 delete them that way. That worked for xHamster.

17 Q So what did you -- you -- you contacted
18 their e-mail? How did that work?

19 A I -- I reported the videos, and I just,
20 like, explained, you know, that I was reporting on
21 part of these videos. I don't want them online.
22 And, you know, it's a copyright issue.

23 Q And to your knowledge, did you -- well, did
24 you go back and look to see if they were gone?

25 A Yeah.

1 Q Did they remove them after your request?

2 A They removed them, but there are still
3 screenshots floating all over the internet. Once
4 they're there, they're there. So I could identify
5 myself in screenshots and my name in the comments
6 still, even though they're deleted. So they did what
7 they could to get them gone and I'm -- I'm trying to
8 just be happy with that and just pretend it's not
9 there.

10 Q So at the time that you found those initial
11 videos on xHamster, you didn't contact law
12 enforcement?

13 A No, not at that point. I had later, from
14 the advice of friends, you know, said, "Hey, I found
15 these online. I tried to delete them." And they had
16 said, you know, "Maybe -- just try to talk to the
17 lawyer you had before," 'cause I knew I couldn't
18 afford any help with it.

19 And that lawyer had just advised I -- I
20 should call law enforcement because this is against
21 the law and this is harassing and threatening
22 behavior.

23 Q So how long was it between the first -- the
24 first time you found videos on xHamster and had
25 them -- them removed, how long was it between then

1 and when you found additional videos?

2 A A couple of weeks. I believe I found the
3 xHamster videos at the beginning of June. And then I
4 happened to look later in June and I found them on --
5 I think I found at least nine websites that they were
6 on, including xHamster at that point. So --

7 Q So what led you to search again?

8 A 'Cause I had found them the first time. My
9 lawyer had told me, when we were going through the
10 divorce, if he's posted them one place, you know,
11 it's typical that they post them everywhere. You
12 should check.

13 Q And did you follow any of these links to
14 the websites yourself?

15 A Yeah, I found the links myself, actually.
16 I -- I would go through and search albino porn or my
17 name on the internet and any website I could find,
18 I'd copy and paste the URLs --

19 Q Okay.

20 A -- and send them to law enforcement.

21 Q And to your recollection, were the videos
22 all publicly available?

23 A Yeah.

24 Q Did you personally have any accounts on
25 these pages or anything like that?

1 A No.

2 Q So let's talk about the videos themselves.

3 Were the videos you found during the second round
4 photograph searching the same ones as had been posted
5 on xHamster at first?

6 A Yeah. There were only four --

7 Q Okay.

8 A -- so they were posted everywhere.

9 Q And --

10 A It's the same videos.

11 Q -- they were the same ones that were made
12 in 2010?

13 A Yeah.

14 Q So you mentioned before that you were
15 taking steps to try to preserve the links that you
16 found them on?

17 A Mm-hmm.

18 Q Did you compile a list of those URLs?

19 A Yeah, I did.

20 Q So I want to show you what has been marked
21 as State's Exhibit 10. Do you recognize this
22 document?

23 A Yes.

24 Q Is that the list of links that you provided
25 to law enforcement?

1 A Yeah.

2 Q And are those -- is that an accurate list
3 of the links that you found the videos on and --
4 and compiled?

5 A Yeah.

6 MS. ATWOOD: Your Honor, we'd offer
7 State's 10.

8 MR. TAYLOR: No objection.

9 THE COURT: Thank you. It'll be
10 received.

11 (State's Exhibit No. 10 received.)

12 BY MS. ATWOOD:

13 Q Roughly, how many links did you have listed
14 on that list there?

15 A It's hard for me to count 'cause I --

16 Q It's okay.

17 A -- I can't see well.

18 Q Don't worry.

19 A It -- it looks like about 15.

20 Q Did you also take any steps to document
21 what you had found in screenshots and things like
22 that?

23 A I did. After I deleted the xHamster
24 videos, I realized I really actually needed to take
25 screenshots that these are there to try to protect

1 myself. And so I did try to make as many screenshots
2 as I could and provide the evidence.

3 Q So I'm going to show you what is marked as
4 State's Exhibit 9. Feel free to review that. It's a
5 big packet. But do you recognize that set of
6 documents?

7 A Yeah, that -- yeah, so far, I'm
8 recognizing.

9 Q Okay.

10 A Not fun to look at.

11 Q Are these copies of the screenshots that
12 you were compiling to provide to law enforcement?

13 A Yeah.

14 Q And do they -- are they true and accurate
15 to your recollection?

16 A Yeah.

17 MS. ATWOOD: Your Honor, we would offer
18 State's Exhibit 9.

19 MR. TAYLOR: No objection.

20 THE COURT: Thank you. They will be
21 received.

22 (State's Exhibit No. 9 received.)

23 BY MS. ATWOOD:

24 Q So you mentioned that after you found
25 these additional links and website postings, that you

1 contacted friends and then your attorney and then law
2 enforcement --

3 A Yeah.

4 Q -- is that accurate?

5 A Yeah.

6 Q So do you remember having a conversation
7 with Deputy Duenas on June 22nd, 2016?

8 A That fits the time frame when I was talking
9 with him.

10 Q Okay. Did you and the deputy work out a
11 plan to attempt to call the defendant?

12 A Yeah.

13 Q And why did you guys do that?

14 A They wanted to hear that -- him saying that
15 he had did it because, you know, just having a user
16 name on a website isn't enough. They wanted to hear
17 intent and that he was upset with me and, you know,
18 he had a revengeful reason for -- for doing it and
19 that he had posted them.

20 Q And when you guys tried to make this
21 pretext phone call, did he answer?

22 A No.

23 Q How about text messages? Did you try to
24 text him?

25 A He responded to text message.

1 Q But what did he say in the text messages?

2 A First he asked who it was. I said who it
3 was. I -- I hadn't talked to him in a while. So,
4 you know, once I'd confirmed, yes, it's Meagan Vance,
5 he asked me what was going on and, you know, that he
6 was working and that he was busy.

7 You know, "Is it an emergency? Let's talk
8 about it. Or is it not an emergency?" And at that
9 time, I told him, "I saw the videos. We need to talk
10 about it right now." And it ended at that point.

11 Q He didn't --

12 A He didn't --

13 Q -- respond?

14 A -- respond.

15 Q So did he make any further contact with
16 you, personally, after that point?

17 A Yes, yes.

18 Q I would like to show you State's
19 Exhibits 11 and 12. This is State's Exhibit 11. Do
20 you recognize this exhibit?

21 A Yeah.

22 Q Is this a copy of a message that was sent
23 to you from the defendant?

24 A Yeah.

25 Q And does it true and accurately depict the

1 message he sent?

2 A Yeah.

3 MS. ATWOOD: We would offer State's

4 Exhibit 11.

5 MR. TAYLOR: No objection.

6 THE COURT: Thank you. It'll be

7 received.

8 (State's Exhibit No. 11 received.)

9 BY MS. ATWOOD:

10 Q And this is State's Exhibit 12. Do you
11 recognize that exhibit?

12 A Yeah.

13 Q Is that a copy of another e-mail forwarded
14 to you from the defendant?

15 A Yeah.

16 Q And -- and is that a true and accurate copy
17 of that e-mail?

18 A Yeah.

19 MS. ATWOOD: Your Honor, we'd offer
20 State's Exhibit 12.

21 MR. TAYLOR: No objection.

22 THE COURT: Thank you, Mr. Taylor.

23 It'll be received.

24 (State's Exhibit No. 12 received.)

25 ////

1 BY MS. ATWOOD:

2 Q And what was the nature of the contact he
3 made with you in State's Exhibits 11 and 12?

4 A Well, it was very clear to me when I'd
5 received it that he knew something was going on
6 because he said, "Please stop trying to ruin my life.
7 I just got a job. My life's been nothing but
8 suffering."

9 He's been living in hopelessness. He
10 doesn't want to continue that and he basically wants
11 to make a deal with me to get rid of these videos so
12 he could keep his job and that he wants to talk to me
13 about that.

14 That other piece of evidence is he
15 forwarded something he had sent to one of these porn
16 websites and he had said, "I had upload the -- I had
17 uploaded these to xHamster," and he was showing that
18 he had removed three videos on one website.

19 He forwarded me that little receipt that he
20 had tried to remove those videos and sent them up to
21 my work e-mail.

22 Q And these contacts were made with you after
23 you had already contacted law enforcement?

24 A Yeah.

25 Q Okay. So just to be clear, up to this

1 point, had you ever given him any indication that you
2 would consent to the dissemination of this video --
3 or these videos?

4 A No.

5 Q I want to ask you some questions about how
6 this has affected your life at all.

7 A Okay.

8 Q So let's start with on a professional
9 level, how has this affected you or harmed you
10 professionally, if at all?

11 A Well, on one end, I see it as a ticking
12 time bomb. I teach middle school. I am very open
13 about my unique disability.

14 And, you know, anytime a kid or a parent
15 can find this video and whether or not I'm a good
16 teacher, it's just not appropriate for these images
17 of me to be seen in my professional life.

18 On the other end, once I had received
19 these links to porn websites on my work e-mail, law
20 enforcement told me I need to talk to my supervisor
21 and tell them I did not want to receive these e-mails
22 with links to porn and that there was a case being
23 filed.

24 I had to talk to my supervisor and say that
25 so that porn wasn't seen on my work e-mail as a

1 teacher. So that's -- that's how it's affected my
2 work life so far. And, you know, someday, someone
3 could find these videos and my career could be over
4 or very negatively affected.

5 Q How about your personal life and a personal
6 sense of well being?

7 A It's stressful. I have a long history of
8 Ben getting something embarrassing of me and posting
9 it online. This isn't the first time he's posted
10 images of me without my consent.

11 MR. TAYLOR: Objection.

12 THE COURT: Sustained.

13 You will strike that.

14 BY MS. ATWOOD:

15 Q So let's just talk about from --

16 A Okay.

17 Q -- these postings that were found in
18 this -- June of this year and -- and how that's
19 impacted you personally.

20 A Okay. It's been very stressful to deal
21 with this. I'm really just trying to pretend it's
22 not there so I don't get really upset about it. And
23 it's stressful to continue to have this battle going
24 on between him and I, so --

25 Q Has it affected your sense of closure about

1 your relationship?

2 A Yeah, yeah.

3 Q And what about your new relationship?

4 A It really affects that, too. It's kind of
5 difficult to continually go through a past
6 relationship and to mourn that while I'm in a
7 different relationship. So I've been wanting to
8 spend a lot more time alone and just, you know, have
9 some emotional, relationship-type issues come up.

10 MS. ATWOOD: Those are all my questions
11 for now. Thank you.

12 THE WITNESS: All right. Thank you.

13 THE COURT: Okay. Mr. Taylor.

14 CROSS-EXAMINATION

15 BY MR. TAYLOR:

16 Q Good afternoon, Ms. Vance. How are you?

17 A As good as I can be.

18 Q Understandable. Excuse me. Give me just
19 one moment to get set up, please.

20 A Mm-hmm.

21 Q All right. So I guess, let me start with a
22 couple big-picture questions. At this time, you
23 don't want Ben Barber in your life anymore, correct?

24 A Yeah.

25 Q You would like to see him permanently

1 removed?

2 A I -- yeah. I don't think we should have
3 any contact with each other. I don't want that at
4 all.

5 Q Don't want to see him, don't want to talk
6 to him, nothing?

7 A Nothing, yeah.

8 Q I want to talk to you a little bit about
9 the content of these videos just to make sure we're
10 all clear on everything.

11 A Okay.

12 Q Talking about four videos?

13 A Yeah.

14 Q Both you and Mr. Barber are featured more
15 or less equally in those videos?

16 A Yes.

17 Q All right. And in those videos, you guys
18 are having sex?

19 A Yes.

20 Q All right. Those videos were made, do I
21 understand it correctly, using his camera on his
22 phone?

23 A Yes.

24 Q All right. And they were then put on his
25 computer or something like that?

1 A I don't know what he did with them from
2 that point. I know they were recorded on his phone.

3 Q All right. I want to talk to you some
4 about the sort of circumstances that led to the
5 creation of these videos.

6 A Okay.

7 Q You've testified that Mr. Barber basically
8 coerced you into doing this?

9 A Yeah.

10 Q You felt -- you told us earlier you felt
11 pressured to be in these videos?

12 A Yeah.

13 Q Okay.

14 A I wanted to sexually provide to my partner
15 and he was telling me it wasn't enough at the time
16 and he needed that. He --

17 Q At any point, did you indicate to him that
18 you didn't want to make these videos?

19 A I indicated to him that I wasn't ready. I
20 didn't want to have videos sent everywhere; that if
21 this was just between us and if this was going to
22 sexually satisfy him and was just for him, I was okay
23 with that because I didn't want him to feel
24 abandoned.

25 Q But you certainly consented to making

1 the videos?

2 A I consented to making the videos.

3 Q And you knew, obviously, there was a camera
4 set up, that it was being recorded, all that stuff?

5 A Yes.

6 Q Okay. So, again, just to kind of beat this
7 point to death, Mr. Barber didn't take these videos
8 from you, correct?

9 A No.

10 Q He didn't hack into your personal website
11 or anything like that and steal them?

12 A No, no. He --

13 Q They've been --

14 A They were made consensually. We had agreed
15 what they were -- the purpose was for him. They were
16 made consensually and he had recorded them. I knew
17 they were being recorded.

18 Q And they have been in his possession the
19 entire time?

20 A Yeah.

21 Q Now, you talked some on direct about this
22 idea that during your divorce, you maybe mentioned
23 these things to your lawyer. Did I understand your
24 testimony correctly?

25 A Yes.

1 Q Those videos were never actually mentioned
2 in any of the divorce proceedings, though, correct?

3 A Yes.

4 Q So, I mean, in the hundreds of pages of
5 documents and filings talking about everything from,
6 like, give me back my rain boots, all that stuff, the
7 videos are never mentioned?

8 A Yes. They were not officially mentioned
9 at that point. It wasn't a law yet, so my lawyer was
10 discussing that with me unofficially, you know,
11 "Maybe you want to do this in the future once this
12 becomes a law."

13 Q But you never preemptively mentioned
14 anything about it? You never -- you never discussed,
15 "Hey, now that we're getting divorced, get rid of
16 those videos," or -- or --

17 A Yeah. Well, at the time, they were on his
18 website. If you typed in, like, "sexy with four
19 exes" or something from his website, you could find
20 them. But he wasn't advertising them. So it made me
21 uncomfortable, but he wasn't publicly trying to
22 show them.

23 So it felt very uncomfortable, but I knew
24 that the nature of our relationship, it -- when you
25 go through a divorce, there's just things you --

1 you're not going to battle about. It's not going to
2 go anywhere. And I just really wanted to have our
3 relationship over with.

4 So at that point, I was just going to leave
5 it there and, you know, wait until it became a law.
6 I didn't know if I'd get legal representation for
7 that at that point, so my concern was really just
8 getting a divorce, just moving on with our lives.

9 Q So if I understand you correctly, you were
10 thinking about them and thinking that maybe down the
11 line, this would become a law and you could get him
12 for that?

13 A I -- my lawyer had suggested that, you
14 know, this is an option you could take. I was not
15 concerned about the videos because I didn't think
16 anyone could find them. And -- I was going to say
17 something else and I don't remember.

18 Q Please help me understand your testimony
19 because --

20 A Yeah.

21 Q -- on one hand, you've testified that you
22 had a conversation with your lawyer -- what sounds
23 like an in-depth conversation -- that you were
24 worried about them and this and that. But you also
25 just said you weren't worried about them. So were

1 you worried about them then or not?

2 A I was worried about them, but I was also
3 worried about a lot of other things pertaining to the
4 divorce. I was worried about getting my birth
5 certificate from him.

6 I was worried about those sorts of things.
7 And until the point where I went to get my stuff and
8 he said, "Hey, I'm making a website about you that's
9 going to be called meaganvance.net. Look for it."

10 At that point, I knew he was going to seek
11 vengeance and publicly shame me because he told me
12 that. And that was in the end of April 2015. Before
13 that point, I was not concerned. I didn't think
14 anything would come of it.

15 Q Okay. So it wasn't until April of 2015
16 that you became concerned?

17 A Yeah. I became concerned because he said
18 he was going to make a website and he -- he bought
19 that URL. So at that point, I was worried, yes.

20 Q So this is the threat you've mentioned
21 several times?

22 A Mm-hmm.

23 Q Now, your testimony up to this point has
24 never -- thanks. Let me withdraw that and rephrase
25 that question. I guess what I want to talk to you

1 about following that is, April 2015, you're
2 testifying you became concerned about these videos?

3 A Not in particular the videos because I
4 didn't know they were there. I was concerned about
5 him making a website about me. I didn't know what he
6 was going to put on it. I assumed probably videos or
7 something of that nature. But he just said he was
8 going to make a website about all my transgressions,
9 so --

10 Q And to be fair, you guys have gone back and
11 forth very much over the years about transgressions
12 on each side?

13 A Yeah. But it's mostly -- I ended the
14 relationship and I really just tried to move on. I
15 have, you know, told him that I hope he has a good
16 life. I wanted to be, you know, friends with him. I
17 wanted to resolve.

18 And he was -- he was angry with me. He was
19 trying to do anything he could to stop it and keep me
20 from being able to get a divorce and move on. So I
21 felt like I was trying to protect myself as much as I
22 could. I don't want to seek any other vengeance on
23 him because I -- I just want to move on.

24 Q I want to make sure I understand your
25 testimony correctly. In April of 2015, when

1 Mr. Barber made this supposed threat about this
2 website, there was no mention then of the videos?

3 A He had not mentioned the videos --

4 Q So he certainly --

5 A At that time.

6 Q -- didn't say, "I'm going to make a website
7 with these pornographic videos"?

8 A He did not say, "I'm going to make a
9 website with pornographic videos."

10 Q He didn't even allude to the pornography?

11 A He said it would be of my transgressions,
12 whatever that means.

13 Q You guys have gone back and forth over
14 the years and accused each other of different
15 transgressions. Would you agree with that?

16 A We've certainly argued a lot. I don't
17 think we've gone back and forth talking about
18 transgressions.

19 Certainly, I don't deny the fact that we
20 had a lot of arguments through going through the
21 divorce. I don't feel like I added more flame to the
22 fire as far as blaming him for so many things. When
23 I left, I wanted it over.

24 Q Getting back to my question, would it
25 clarify my question to put it like this: In the

1 past, both you and Mr. Barber have accused each other
2 of committing crimes?

3 A I think I accused him of committing Fraud
4 at one point.

5 Q You threatened him to go to jail?

6 A I don't remember that. If you have, you
7 know, evidence of that, I'd love to look at it. It
8 was a long time ago, so --

9 MR. TAYLOR: May I approach --

10 THE WITNESS: -- I don't really remember
11 every detail.

12 (Pause in proceedings, 3:02 p.m. -
13 3:03 p.m.)

14 BY MR. TAYLOR:

15 Q I guess I'm going to mark here to assist
16 you if that's all right.

17 A That sounds good.

18 Q Read these two top paragraphs, please.

19 A So what I had said and then his one-line
20 response?

21 THE COURT: To yourself, please.

22 THE WITNESS: Okay. So what's your
23 question with this?

24 BY MR. TAYLOR:

25 Q May I?

1 A Yeah.

2 Q Thank you. What I was clarifying was your
3 recollection that you had, in the past, made threats
4 to have Mr. Barber arrested for crimes and have him
5 sent to jail.

6 A Yeah. I don't -- I don't remember that,
7 but I don't deny that I might have said something
8 nasty like that. What had happened is I put a \$2,000
9 deposit down on our house and I was -- I had left and
10 I was trying to get some sort of that deposit back
11 when I had left.

12 And it was probably heated -- a heated
13 argument where he was threatening me as well. So
14 that's kind of an isolated bit of lines, but I don't
15 deny that I could have said that.

16 Q So you guys have both -- you would agree
17 that, to your recollection, you guys have both gone
18 back and forth with these types of threats before?

19 A Yeah. We went through a nasty period when
20 I first left.

21 Q Okay.

22 A And there were very, very nasty things said
23 back and forth for a few months.

24 Q I want to talk some about your relationship
25 with Mr. Barber back during the good times, so 2010,

1 2011.

2 A Okay.

3 Q All right. So when you guys first met, you
4 were living in Ohio, he was living here in Portland?

5 A Yes.

6 Q All right. And you testified this was your
7 first sort of serious, adult relationship?

8 A Yes.

9 Q And you would agree that you guys were
10 involved in sort of the sexually adventurous side
11 of life?

12 A We were involved. But we had talked about
13 it and it was fun to talk about. So we had talked
14 about going to a sex club. We had talked about
15 meeting with another couple, kind of spur of the
16 moment when I was visiting him. So we had talked
17 about it.

18 Q And you guys actually did converse with at
19 least one other couple, correct?

20 A Yeah. The day before I flew back to Ohio,
21 we -- I think, maybe, we had posted some sort of ad
22 or something on Craigslist and we got a response from
23 a couple. And, you know, it kind of started with Ben
24 saying, "Would you like to try swinging?"

25 And, you know, I was, like, "Why not? You

1 know, I'd love to try." So we got a response the
2 night before I was leaving from the couple. And
3 it -- it didn't pan out because the time sensitivity.
4 So we had talked about it; it never came to fruition.

5 Q So to clarify a few points, you were aware
6 these postings were being made?

7 A I was aware that there was some sort
8 of posting made or some way that the couple could
9 contact us.

10 Q And you were in agreement with that?

11 A Yes.

12 Q Sounded like a good plan?

13 A I was nervous about it, but I was kind of
14 at the point in my life where, you know what? I'm
15 going to be very open minded. And, you know, why not
16 try? I didn't know what was in the posting. I don't
17 remember how the contact was made, but there was
18 definitely a couple that had responded.

19 Q And you, as part of this, did have contact
20 with another side of that couple, right?

21 A Yeah. When I had gone back to Ohio, I had
22 talked to the male of that couple.

23 Q So there was discussions going on in your
24 relationship about having these threesomes,
25 foursomes, what have you?

1 A Well, when I had gone back to Ohio the next
2 day and I eventually started talking to this man, we
3 developed a friendship. It wasn't focused on, "Oh,
4 my Gosh, I'm so excited for us to do swinging." It
5 was building some sort of, you know, friendly
6 relationship.

7 Q So there was no sexual aspect to it at all?

8 A There was a sexual aspect, but it wasn't,
9 you know, talking about all of us getting together.
10 So it -- it really didn't work out.

11 It was, you know, two young people
12 thinking, "Oh, this is a great idea," and then it --
13 it wasn't really something that worked out or that I
14 that I would decide to do.

15 Q You would agree that during your
16 relationship with Mr. Barber, you guys, together or
17 separately in connection, created a substantial
18 amount of photos and videos and things like that?

19 A I remember a few, but I also know that we
20 did some sexual things on Skype and he might've taken
21 some photos of me. I had later seen that he had a
22 lot of photos of me from Skype that I didn't know
23 about. So I guess there was substantial. I didn't
24 know about all of them until later.

25 Q So suffice it to say there was a great deal

1 of nude technology happening?

2 A There was some that was consensual both
3 ways.

4 Q Following up on that. You guys had some
5 discussions about the idea of making more
6 pornography; is that correct?

7 A One day when I was visiting, we had talked
8 about, "Oh, wouldn't that be interesting to make porn
9 together? We could make a lot of money." But then,
10 you know, within a short period of time, we'd
11 actually seriously talked about that and said, "No,
12 that's not -- that's not something for us."

13 Q So --

14 A That's an interesting thing for people to
15 do, but not for us when we're going into our careers.

16 Q So there was certainly discussion about the
17 possibility of it happening and then you're saying
18 later you guys decided not to?

19 A There was a mention of it and then a later
20 discussion and confirmation that, no, soon after.

21 Q So I want to talk to you about 2015 some.

22 A Okay.

23 Q April, your testimony is that he made this
24 threat about a website?

25 A Mm-hmm.

1 Q Was that threat made in person, online?

2 A That was made in person when I had left his
3 home after trying to get my stuff.

4 Q So we don't have any sort of recording or
5 proof of that conversation?

6 A No. It was -- it -- I had heard it, the
7 sheriff that was with us had heard it and my
8 boyfriend had heard it. So it was -- it was verbal.

9 Q We're not hearing it from any of the
10 other folks?

11 A No.

12 Q All right. So you testified some about
13 sort of the conversations you guys had throughout
14 2015. Your testimony, as I understood it, was a lot
15 of the time, you didn't want to speak to Mr. Barber,
16 but then sometimes you would reach out and talk to
17 him and things like that?

18 A Yeah.

19 Q And you were aware this whole time
20 Mr. Barber wanted to be back in a relationship with
21 you?

22 A No, not the whole time. No.

23 Q Different --

24 A Sometimes he would say, "I just want to be
25 friends. I don't want anything else," or, you

1 know -- it's -- it was not clear to me that he wanted
2 to get back with me. At one point, he -- he had a
3 different girlfriend and everything, so it --

4 Q He definitely wanted you back in his life,
5 would that be fair to say, either as friends or a
6 relationship or whatever?

7 A Sometimes that was clear.

8 Q I want to talk to you specifically about
9 that conversation I mentioned in July of 2015.

10 A Okay.

11 Q So July of 2015, you guys have an extended
12 what appears to be a G Chat conversation; is that
13 correct?

14 A There might be. If you have it, I can look
15 at it.

16 MR. TAYLOR: May I approach, Judge?

17 THE COURT: Mm-hmm.

18 (Whispered discussion, off the record,
19 3:11 p.m. - 3:12 p.m.)

20 BY MR. TAYLOR:

21 Q I'm going to show you Defense 101. If you
22 can just maybe flip through that. And --

23 A Okay.

24 Q -- I don't need you to read and digest the
25 whole thing right now.

1 A Okay. This is the conversation I thought
2 you were talking about and I just wanted to confirm.
3 From what I see, I remember this conversation, not
4 vividly, but this sounds like things I would say at
5 that point in time. Do you want me to look through
6 every page of it?

7 Q I'd like to direct your attention to a
8 certain part of it and if I can actually have the
9 document back --

10 A Yeah.

11 Q -- for a minute. Thank you. What I want
12 to ask you about is part of this conversation where
13 Mr. Barber informed you that somebody had attempted
14 to dox the pornography that was kept on his FTP
15 server.

16 A Okay.

17 Q Do you recall having that conversation?

18 A Yeah.

19 Q Do you recall your response to that
20 conversation?

21 A Yeah, I do. And I remember -- I didn't
22 really expect that to come up in conversation. And
23 these same people that he thought were going to dox
24 him were people that I was actually talking to.

25 And, you know, I was just telling them,

1 like, "He's going to make this website. He does have
2 these videos on his personal website. He -- you
3 know, he said he was going to make this website of my
4 transgressions."

5 And so they had seen that and they were
6 kind of protective over me that they didn't want
7 these things shared. I don't know what had happened
8 in his situation or who had talked to him, but,
9 apparently, he thought people were going to dox us,
10 according to these videos. And I knew that these
11 people weren't going to; they were protecting me.

12 Q So you knew that. You didn't share that
13 information with Mr. Barber, though, right?

14 A Yeah. I was dishonest to him about that
15 'cause I didn't -- I didn't want to get in a fight
16 about it.

17 Q So your response to him was, "Yeah, I got
18 some messages about it," that's about it?

19 A Yeah. It was -- I was just playing stupid.
20 I was, like, "Oh, interesting."

21 Q You would agree that would leave him with
22 the impression that you were unconcerned about it?

23 MS. ATWOOD: Objection, Your Honor.

24 THE COURT: Sustained.

25 THE WITNESS: What was the question

1 again?

2 THE COURT: There is no question.

3 BY MR. TAYLOR:

4 Q Don't worry about it.

5 A Oh, okay.

6 Q I want to ask you some questions about

7 those e-mails Ms. Atwood discussed with you.

8 (Whispered discussion, off the record,

9 3:14 p.m.)

10 THE WITNESS: We can hunt for them

11 together.

12 BY MR. TAYLOR:

13 Q If I could just take the pile of

14 exhibits --

15 A The stack --

16 Q -- up there?

17 A -- yeah.

18 Q I'm going to go a little scatter shot and

19 just cover the ones I want to discuss with you, all

20 right?

21 THE COURT: That's fine.

22 THE WITNESS: Okay.

23 BY MR. TAYLOR:

24 Q All right. So regarding the e-mail that

25 was sent to your work e-mail on June 26th of this

1 year --

2 A Okay.

3 Q -- specifically the one showing that the
4 xHamster links had been disabled --

5 A Okay.

6 Q -- those, obviously, were not working links
7 to these videos, correct?

8 A As far as I remember, these -- you would
9 click on them and it would show, like, a mini
10 screenshot. And then you would try to click on that
11 screenshot to open up the video and then the video
12 wouldn't show. That's as far as I remember.

13 There were videos that had been deleted
14 like that. I don't remember if those were the exact
15 ones he had sent to me.

16 Q And to be clear, this e-mail that I'm
17 talking about was the only e-mail that was ever sent
18 to you or anyone else with any sort of link to this
19 video; is that correct?

20 A From Benjamin, yeah.

21 Q All right. So he didn't send anyone else
22 any links or anything like that?

23 A Not that I have seen. I wouldn't know if
24 he would send them to other people, but --

25 Q Fair enough.

1 A -- that's what I'd seen.

2 Q As far as things he sent to you, nothing
3 more and no active links? He never sent you links
4 that went to actual working videos?

5 A He never sent me to any other links other
6 than that --

7 Q Okay. So no --

8 A -- e-mail.

9 Q -- no taunting e-mails about, "Ha-ha, look
10 at this link"?

11 A It wasn't, "Ha-ha, look at this link." It
12 was, "I had posted these videos. Look. I'm deleting
13 them. Please don't seek legal action."

14 Q "Confirmation, I've disabled them. I'm not
15 seek -- please don't seek legal action."

16 A He had not disabled all of them, though. I
17 want to be clear about that. So --

18 Q Did you, when you viewed them, found other
19 working ones?

20 A There were other working videos all over
21 the internet.

22 Q So Mr. Barber, around the same time, sent
23 you a number of e-mails, all to the tune to, "Please
24 stop trying to ruin my life. I'll do anything you
25 want. I'll give you my next paycheck," stuff like

1 that?

2 A I don't remember the, "I'll give you my
3 next paycheck." I'd like to look at it to confirm
4 that, but everything else, yes. He sent me a series
5 of e-mails after law enforcement had contacted him.

6 Q Showing you State's 11. If you could have
7 a look at it there.

8 A Yeah. It says, "I'll send you my first
9 paycheck and every other paycheck." So he's trying
10 to give me money so I could make this stop. That's
11 what he was saying.

12 Q So June 26th, 27th, which is after you
13 discovered these videos and had contacted Deputy
14 Duenas, Mr. Barber reaches out to you and tries to
15 basically settle this in a civil manner?

16 A Yes. After he had heard from law
17 enforcement, he was willing to settle it.

18 Q He was, in fact, more or less begging you,
19 right?

20 A That -- that's what it looks like, yeah.

21 Q I'm going to ask you some questions about
22 the State's 7. This is the May 30th, 2016 e-mail.

23 A Okay.

24 Q So as far as our timeline goes, your
25 testimony is that you discovered the videos at what

1 point?

2 A I discovered the videos at the beginning
3 of June.

4 Q All right. So May 30th, you hadn't
5 discovered the videos yet?

6 A I don't think so as of May 30th. The
7 receiving e-mails at the end of May was my reason
8 for taking another look on the internet to see if
9 there was anything.

10 THE COURT: And I apologize, what year
11 did you say?

12 MR. TAYLOR: This is May 30th of this
13 year, 2016, Judge.

14 THE COURT: Okay. Thank you.
15 BY MR. TAYLOR:

16 Q In this e-mail, he's talking a lot about
17 all the work he's doing and how he's got the job at
18 Intel, stuff like that?

19 A I don't know 'cause I don't have the
20 e-mail.

21 Q My apologies.

22 A Yeah. He was talking about all the work
23 he's been doing, all the growth he's made and that
24 he -- he has contempt for me even though he loves me.
25 And then he goes on to talk about his contempt

1 for me.

2 Q Certainly no reference to any videos, any
3 pornography, anything like that?

4 A No reference to videos, just a vague, "I
5 have contempt for you."

6 Q Sure. And that's been consistent
7 throughout this divorce, right?

8 A Yeah.

9 Q This sort of vague contempt?

10 A Yeah, mm-hmm.

11 Q So that's nothing new?

12 A It's -- it's nothing new. It's certainly
13 not nice to hear, but it's nothing new.

14 Q So we're now talking -- because it seems --
15 your testimony seems to be that a lot of these videos
16 were uploaded in April; is that correct?

17 A Yeah. When I had looked in June, I had
18 seen them posted towards the beginning of April. It
19 said, "Posted on April 3rd," for example.

20 Q So in this May 30th e-mail, six, seven
21 weeks after these videos were posted, there's no
22 mention of them at all?

23 A Yeah, I didn't know they were posted.

24 Q Well, he doesn't mention them, 'cause this
25 e-mail comes out before --

1 A He doesn't --

2 Q -- it was mentioned.

3 A -- mention it either, yeah.

4 Q He certainly doesn't --

5 A Yeah.

6 Q -- you know, make any new --

7 A Yeah.

8 Q -- threats, make any reference to

9 pornography, nothing like that?

10 A He -- he just continues saying, "I have
11 contempt for you," and then also just talking about
12 his growth and -- yeah.

13 Q All right. The next e-mail I'm going to
14 ask you about is State's Exhibit 8. That is, looks
15 like, the June -- I don't believe there's actually a
16 date on it -- the June 19th e-mail.

17 A Okay.

18 Q Take a look at that.

19 A Okay.

20 Q All right. So that comes in even after the
21 May 30th one. And this is presumably after you've
22 discovered the videos; is that correct?

23 A What is the date on it? I didn't look at
24 the date.

25 Q June 19th.

1 A June 19th. That must have been after I had
2 found the first videos at least.

3 Q The title of that e-mail is, "Hello Again,
4 Dear Friend"?

5 A Yeah, that's pretty vague.

6 Q You'd agree that doesn't sound like
7 somebody who's angry with you?

8 A No, it doesn't sound angry. It's -- it
9 didn't sound like it was talking directly to me
10 either. It was -- it was just very vague, so I just
11 thought he was blogging to me or something.

12 Q It's an -- it's an e-mail sent to you
13 titled, "Hello Again, Dear Friend." It wasn't sent
14 to anybody else?

15 A Yeah. Well, I guess I just -- when I saw
16 it, it said, "Dear friend," and it -- it -- I
17 thought, you know, he would say more or reference my
18 name or something. We had been married. And "dear
19 friend" out of the blue just kind of threw me off,
20 but he had sent it to me, yes.

21 Q Don't -- you do agree that it doesn't
22 sound, again, like someone who is angry with you?

23 A No. It sounds like someone who -- he was
24 just talking about what he was doing with his work
25 and that, you know, everyone else has family to go to

1 and he doesn't.

2 Q He's lonely, things like --

3 A He's lonely.

4 Q -- that?

5 A He doesn't have anything else going on.

6 Q The contempt is gone, huh?

7 A In that e-mail, he didn't write about
8 contempt.

9 Q Didn't say anything bad or anything mean or
10 anything like that?

11 A Not in that e-mail. He has a pattern of
12 trying to talk to me kindly and once I respond to
13 him, then he starts to share that contempt and anger.
14 So I -- I know to not respond because if I respond,
15 then he'll start to discuss everything I've ever done
16 wrong in his mind and that -- that's why I don't
17 respond. I care. I -- I just can't respond for our
18 sakes.

19 Q I'm going to ask you a question about the
20 contents of one of these messages.

21 A Mm-hmm.

22 Q This would be State's 5. February 22nd,
23 2016, he sends you a message?

24 A Uh-huh.

25 Q Yeah. And that, again, is a -- is a brief

1 message, expresses a wish to be friends again?

2 A Yeah, "I hope we can become friends again."

3 Q So nothing threatening or contemplative or
4 anything like that on February 22nd?

5 A No, not threatening. If I respond to him
6 and don't block him, it becomes threatening. It
7 always starts out unthreatening.

8 Q Second question -- there's not a sticker on
9 this one.

10 MS. ATWOOD: I think it's a two-page --

11 MR. TAYLOR: Oh, this must be part of
12 State's 6.

13 THE WITNESS: Yes.

14 BY MR. TAYLOR:

15 Q So this is a Facebook message?

16 A Mm-hmm.

17 Q March 20th?

18 A Mm-hmm.

19 Q And that is March 20th, 2016?

20 A Yes.

21 Q Okay. And that is another one of these
22 sort of sad, lonely e-mails?

23 A Yes. But this -- I had blocked him on
24 Facebook. We had dissolved any friendship. He said
25 he did not want to be friends with me. And he

1 would -- kept harassing and threatening me. He'd try
2 to use any information he could.

3 And at that point, I had already blocked
4 him in every medium. So, you know, before it was him
5 e-mailing my work. And then this is him creating a
6 new Facebook account to contact me because I had
7 blocked him before. So he had known I didn't want to
8 hear from him, and I just repeated, "I don't want to
9 hear from you."

10 Q You would agree that there's nothing
11 threatening or angry in that?

12 A No. There's something kind of weird about
13 it, just that he had referenced me on some sort of --
14 getting social security document when we haven't
15 talked for a long time.

16 And I said, "Please leave me alone." That
17 was a little weird, but it was -- it -- it wasn't
18 threatening. It was kind of a -- you know, "My life
19 is in shambles. Can I put you on this document?"
20 sort of thing.

21 Q So March 30th, 2016, this e-mail and then
22 we're talking April is when you believe the videos
23 were posted?

24 A Yeah.

25 Q So there's no mention in his e-mail or

1 Facebook message directly prior to when you believe
2 these videos were posted, nothing at all threatening
3 or angry at that time?

4 A Nothing he had said to me that was
5 threatening or angry because I had blocked him on so
6 many mediums. And I -- I pretty much know at this
7 point he wants to do anything to harm me. So I know
8 these e-mails are friendly and he misses me, but I --
9 I don't think he thinks toward -- helpfully towards
10 me.

11 Q Those are your beliefs?

12 A That's -- yeah, from that history -- our
13 history. I just know that it can't continue.

14 Q However, you agree that in this evidence,
15 there is no indication of his anger or his contempt
16 for you?

17 A There's no mention of contempt.

18 Q Just, in your words --

19 A Yes.

20 Q -- sadness.

21 A Sadness, desperation, wanting me to help
22 him.

23 Q And then I guess we are sort of working
24 backwards in time, but I'll wrap up with State's
25 Exhibit 2 and 3 --

1 A Okay.

2 Q -- text messages?

3 A Yes.

4 Q Nothing threatening in those?

5 A Just the fact that he was contacting me
6 after I said, "Do not contact me anymore," several --
7 for several months.

8 Q Understood.

9 A Yeah.

10 Q You -- you had repeatedly expressed you
11 don't want him to talk to you?

12 A Yeah.

13 Q It's pretty clear he can't get over you,
14 right?

15 A Well, I mean, he would say, "I want to be
16 friends again," so it was pretty clear he wanted me
17 in his life again. Yeah, he wanted me in his life.
18 I didn't know in what context, but he would say he
19 missed me and hopes we can be friends again.

20 Q Mm-hmm.

21 A And so --

22 Q So we're in agreement that November and
23 December of 2015, as well as what appears to be early
24 January 2016, no threats, no contempt, nothing
25 like that?

1 A Yeah. It's just out of the blue, "I want
2 to meet you on Thanksgiving," after months of saying,
3 "Don't contact me." It was not vengeful in any way.
4 It was just, "Please hang out with me. I miss you.
5 I'm going to commit suicide." But that's no anger
6 towards me. And he actually says in there, "I'm
7 sorry to burden you," in one of those.

8 Q I forgot if I had wanted to ask you
9 questions about this. Just give me a second to read
10 this last e-mail.

11 A That's fine.

12 (Pause in proceedings, 3:28 p.m.)

13 BY MR. TAYLOR:

14 Q Oh, State's Exhibit 4.

15 A Okay.

16 Q Have a look at this. That is a message
17 on OkCupid, which, again, is an online dating site
18 we've discussed?

19 A Yeah.

20 Q Do you recall -- there's a date on that of
21 February. Do you recall if that was '15 or '16?

22 A I imagine '16. It's kind of -- I -- I
23 don't remember -- I don't know exactly. I think it's
24 2016. I had blocked his profile and I guess he had
25 another profile and messaged me.

1 It goes automatically to a trash folder
2 because of the settings I have to protect myself. So
3 I didn't see this message for a very long time. I
4 had actually only seen it, at the very least, in
5 April of 2016, when I dug later.

6 Q All right. So February 2016, another
7 unwanted communication. Anything threatening in
8 there?

9 A I think it's 2016, but I'm not certain.
10 Let me see if anything's threatening. Nothing
11 threatening, but just keeps repeating that "I don't
12 want to court you. I just want to talk about work
13 lives."

14 And it says, "E-mail me or text message me
15 maybe once or twice a month." So he's -- he's
16 telling me to contact him. Not threatening, but not
17 asking me to contact him, telling me to contact him.
18 There you go.

19 Q And we're going to assume -- correct me if
20 I'm wrong -- this was February 2016 because in
21 February 2015, you guys were still in the divorce,
22 right --

23 A Yeah.

24 Q -- grappling with that?

25 A Yeah, so I would assume February 2016.

1 Q All right. So we have a substantial volume
2 of conversations between you and Ms. -- Mr. Barber
3 ranging from November 2015 to June of this year. In
4 those, he makes no references to threats against you
5 or threats to ruin your life?

6 A Not from what we've looked at, just the, "I
7 have contempt for you."

8 Q Right. That was the closest we come in --

9 A Yeah, in this 2016 section. He has made
10 threats to me otherwise, but not in texts sent to me
11 in this beginning to middle of 2016.

12 Q Ma'am, if you could clarify that, I -- I --
13 I don't understand what you're saying. Are you
14 saying that there is supposedly more evidence out
15 there that we haven't seen?

16 A No. There -- there is a -- a piece of
17 evidence that was sometime in 2015 that was basically
18 saying I was on his shit list and he was going to
19 seek retribution or something like that. But that
20 was 2015. This 2016 portion, he was just trying to
21 send me friendly messages so I'd respond.

22 Q All right. So we are in agreement that
23 November 2015 up until these videos explode, there is
24 no threats?

25 A Yeah -- well, yeah. When he had sent me

1 the text messages for -- the -- there was one kind of
2 vague threat that he had sent me in a voicemail after
3 I didn't respond to his saying he'd commit suicide.
4 But I don't have that evidence so I can't show that
5 to you. That is the only time in that period.

6 Q So at the most -- or at the least, by and
7 large, no threats in any of the communications
8 we've seen?

9 A No direct threats in the communications
10 we've seen.

11 Q Okay. When did you acquire an attorney in
12 this case?

13 A It was June --

14 MS. ATWOOD: Your Honor, I'll object.

15 THE WITNESS: Oh, okay.

16 THE COURT: Sustained.

17 MS. ATWOOD: I don't see the relevance.

18 THE COURT: Sustained.

19 BY MR. TAYLOR:

20 Q Let's talk about -- you talked to
21 Ms. Atwood about the embarrassment you feel about
22 these videos?

23 A Yeah.

24 Q To be very clear on a number of topics,
25 nobody in your life has ever reached out to you and

1 said, "Hey, Ms. Vance, I saw these videos"?

2 A Not yet.

3 Q So nobody, to your knowledge, has seen them
4 that you know?

5 A Not that I know of.

6 Q All right. And, again, we mentioned
7 earlier, you're not aware of them being sent to
8 anyone?

9 A They -- with this couple in 2011 in -- or I
10 think it was 2010 -- there's evidence showing that
11 they were sent to someone, but beyond that, they were
12 just posted publicly.

13 Q All right. They certainly weren't sent to
14 your family, your friends, your work, your employer
15 or anything like that?

16 A Not these videos, to my knowledge. He has
17 sent e-mails to my family talking about my sexual --

18 MR. TAYLOR: I'm going to object.

19 THE WITNESS: Okay.

20 MR. TAYLOR: Sorry, ma'am. That's not
21 responsive to my question.

22 THE WITNESS: Sorry.

23 BY MR. TAYLOR:

24 Q If you'll give me a minute just to review
25 my notes.

1 A Mm-hmm.

2 (Pause in proceedings, 3:34 p.m.)

3 BY MR. TAYLOR:

4 Q You mentioned making a copyright claim on
5 some of these. Can you --

6 A Yeah.

7 Q Can you explain that?

8 A That's what my previous lawyer had said
9 could even though that law wasn't in place yet. And
10 it -- it worked to get rid of those videos on that
11 website.

12 Q Have you, at any point, taken out a
13 copyright on these videos?

14 A No.

15 Q The last thing I want to talk to you about,
16 on direct, you testified that on the xHamster sites,
17 these were somehow connected to your name?

18 A Yes.

19 Q However, you also testified that all of
20 these videos were titled, "Albino Porn"?

21 A Yes.

22 Q All right. A couple things I want to talk
23 to you about there.

24 A Mm-hmm.

25 Q First off, you've been on pornographic

1 websites before?

2 A Yeah.

3 Q Okay. You're familiar with, you go on a
4 website and there's just a ton of videos?

5 A Mm-hmm.

6 Q And they all have titles?

7 A Yeah.

8 Q And the titles are all usually referencing
9 the content?

10 A Yeah.

11 Q The most distinct feature of that video?

12 A Mm-hmm.

13 Q The content of these videos you made with
14 Mr. Barber are pretty normal sex, you would say?

15 A Yeah.

16 Q Very, I guess, vanilla, for lack of a
17 better word?

18 A Yeah.

19 Q All right. So there's nothing about
20 the activities in the videos that are particularly of
21 note that would distinguish them from other types of
22 pornography? It's just two people having sex on a
23 bed?

24 A Yeah, I -- referencing my name was a
25 little --

1 Q I'm going to ask you some questions
2 about that --

3 A Yeah.

4 Q -- in just a minute.

5 A Yeah.

6 Q I'm specifically talking about the titles
7 right now.

8 A Okay. Just the titles, not the
9 description.

10 Q And I guess my questions is: You would
11 agree that in these videos, there's nothing
12 particularly of note? There's nothing particularly
13 wild happening. It's, as we said, vanilla sex
14 between male and female in a bed --

15 A Yeah --

16 Q -- in a house?

17 A -- two people having sex.

18 Q So the only particularly distinguishing
19 factor of -- of this content from anything else is
20 the fact that you're albino, correct?

21 A Yes, and my face is in it. I don't know
22 if that --

23 Q Sure.

24 A -- makes --

25 Q But lots of people's faces are in porn

1 videos; you would agree?

2 A Most of the time, yes.

3 Q All right. So the distinguishing
4 characteristic of these videos is that you happen to
5 be an albino person?

6 A Yeah.

7 Q So you would agree that given that
8 pornographic videos tend to be titled after a
9 distinguishing feature, the idea of titling these
10 videos, "Albino Porn" isn't completely out of the
11 blue, it's the most distinguishing feature of the
12 videos, correct?

13 A It is, but it also singles me out.

14 Q So last thing I want to ask you about is
15 this claim that there were names associated with
16 this.

17 A Mm-hmm.

18 Q So your testimony on direct was that on
19 the xHamster videos, your name was somehow connected
20 to them?

21 A Yeah, and the description was just, "Meagan
22 Vance." That was the -- that was it for the
23 description for each of the xHamster videos.

24 Q Are we seeing any screenshots or evidence
25 of any of that?

1 A I -- I don't know if we have it today. I
2 had sent it to the deputy working on the case. But I
3 had deleted those videos and so we had screenshots of
4 videos titled, "Albino Porn," that are deleted
5 connected to that description.

6 MR. TAYLOR: Thank you. That's my
7 only question.

8 THE WITNESS: Okay.

9 THE COURT: All right. So we're going
10 to take a brief break. We've been sitting for about
11 two hours and I'm sure that we need to kind of walk a
12 little bit.

13 So I'm going to go ahead and have you
14 return to the jury room, give you about ten, 15
15 minutes and then we'll bring you back out and
16 continue.

17 (Whispered discussion, off the record,
18 3:39 p.m.)

19 (The following proceedings were held in
20 open court, out of the presence of the jury,
21 3:39 p.m.:)

22 THE COURT: So when we come back, she'll
23 just be on the stand and you can do your redirect.

24 MS. ATWOOD: Sure.

25 THE COURT: Okay. All right. 15 --

1 ten, 15 minutes.

2 MS. ATWOOD: Thank you.

3 MR. TAYLOR: Thank you, Judge.

4 THE COURT: You may step down now,
5 Ms. Vance. Thank you.

6 THE WITNESS: Yes.

7 (Recess taken, 3:39 p.m. - 3:55 p.m.)

8 THE COURT: All right. So there was
9 some confusion with the exhibits. Did we get that
10 all cleared up?

11 MS. ATWOOD: Yes, Judge.

12 THE COURT: Okay. Great.

13 And, Ms. Vance, if you'll please retake
14 the stand.

15 THE WITNESS: All right.

16 MS. ATWOOD: Your Honor, there is an
17 issue I wanted to raise to the Court before bringing
18 the jury back in. Based on Ms. Vance's testimony
19 that her boyfriend was present during the incident in
20 April of 2015, where the defendant made a threat
21 toward her, he's here today.

22 And I've spoken with Mr. Taylor and told
23 him that I plan now on calling him as a witness for
24 that purpose because she was crossed about whether or
25 not anyone else could vouch for the statement having

1 been made. So there's another witness that I intend
2 to call.

3 THE COURT: Okay. Mr. Taylor?

4 MR. TAYLOR: I don't think I have an
5 argument against it.

6 THE COURT: Okay. So did you want him
7 excluded then until he testifies?

8 MR. TAYLOR: I told Ms. Atwood, at this
9 point, I -- I mean, I -- the bell's kind of already
10 been unrung --

11 THE COURT: Okay.

12 MR. TAYLOR: -- any cross I would do on
13 what has already happened.

14 THE COURT: Okay. Thank you.

15 (The following proceedings were held in
16 open court, the jury being present, 3:56 p.m.)

17 THE COURT: And I heard a question. You
18 may sit wherever you want. Feel free to move about
19 the cabin.

20 Okay. You may redirect.

21 MS. ATWOOD: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. ATWOOD:

24 Q So I just have a couple of things that I'd
25 like to clarify with you based on the -- the

1 discussion you had during cross-examination.

2 You were shown an exhibit of a message
3 thread between you and the defendant where you were
4 mutually threatening various legal actions against
5 each other. Do you remember being shown that
6 message?

7 A Yeah.

8 Q Just to clarify. In this case, regarding
9 this particular investigation, seeking law
10 enforcement was not your first resort, right?

11 A Absolutely not.

12 Q In fact, you had already tried on your own
13 to handle the issue with the website?

14 A Yeah, I didn't want to get into it. I just
15 wanted it -- the videos gone.

16 Q And then you spoke to friends and then you
17 spoke to an attorney and then, finally, felt that it
18 was necessary to seek law enforcement help?

19 A Yeah.

20 Q You were also asked some questions on
21 cross-examination about what defense counsel
22 described as your sexually-adventurous relationship
23 while you were with the defendant.

24 A Mm-hmm.

25 Q Specifically, you were asked questions

1 about the dialogue or relationship between you and
2 defendant and then another couple who you were
3 talking to or planning to meet with as a group; is
4 that --

5 A Yeah.

6 Q -- right? You mentioned that you were
7 aware that the defendant was having conversations
8 with these individuals. Were you aware of the
9 contents of the conversation at all?

10 A No. I -- I had heard that they had -- he
11 had talked to them.

12 Q Okay. But you didn't have any knowledge of
13 what he was saying or sending to them at that point?

14 A No, not at that point.

15 Q And what caused the potential relationship,
16 we'll call it, between you and the defendant and this
17 other couple to end?

18 A When I had gone back to Ohio, I was talking
19 to the guy from the relationship and developing a
20 friendship and he was talking to the woman from the
21 relationship and she was wanting to meet with him
22 alone.

23 Q By "him," who do you refer to?

24 A Benjamin --

25 Q Okay.

1 A -- Barber. And he and I had talked
2 together. He -- he had asked me after they had had a
3 conversation, could he meet with this woman while I
4 was in Ohio? And I was very upset and said, "No."
5 We had an argument about it because I wasn't
6 comfortable with it.

7 I didn't know that they were discussing
8 this without my permission. And we had talked later
9 and realized that their relationship didn't seem
10 healthy. They seemed to be seeking us out as an --
11 something instead of their relationship.

12 And we just decided to not talk to them
13 anymore, that this -- you know, when you meet with
14 other couples or talk with them, that they could be
15 seeking you as a couple for an exit from their
16 relationship. So at that point, we did not want to
17 try that again.

18 Q And to be clear, the purpose for you being
19 open to this relationship was to participate in some
20 kind of sexual encounter, potentially; is that
21 correct?

22 A Yes, as four people.

23 Q Okay. But at any point in time, did you
24 agree as part of this potential relationship to
25 record or disseminate any of your sexual contact with

1 these individuals?

2 A Not that I recall, no.

3 Q Okay. You also were asked about whether
4 or not a substantial amount of photos and images and
5 things like that were created through the course of
6 your relationship with the defendant. And you
7 mentioned that you guys usually contacted each other
8 on Skype?

9 A Mm-hmm.

10 Q Would -- would that be in a video chat?

11 A Yeah, a video chat.

12 Q Okay. You mentioned that you later found
13 out that there were a substantial amount of images
14 you didn't previously know about?

15 A Yes.

16 Q What -- were those from Skype --
17 screenshots --

18 A Those are screenshots --

19 Q -- from Skype?

20 A -- from Skype. We originally, you know,
21 had sexual conversations and did sexual things on
22 Skype video chat. And later, I'd found out that, oh,
23 you can take screenshots from that. So I found a
24 folder of those screenshots later on in our
25 relationship.

1 Q And, again, to be clear, when you were
2 engaging in these sexual conversations or acts with
3 the defendant over Skype, is this just the two of
4 you involved?

5 A Just the two of us.

6 Q And did you ever -- what -- what -- well,
7 how did you feel when you found that he had been
8 saving them as images?

9 A It was -- I felt like my trust had been
10 violated a little bit because I didn't say it was
11 okay for him to take them. But I also felt that I
12 didn't tell him, "Don't take pictures of me." And
13 from what I had seen, those pictures weren't shared
14 with other people, so I let it go.

15 Q Because you thought he was, if anything,
16 using them just for his personal use?

17 A I thought it was just a personal thing.

18 Q Okay.

19 A And I didn't -- I didn't want to have an
20 argument about it. And I had consented to, you know,
21 having that Skype video conversation between us. So
22 if there were photos taken that he had for his own
23 personal use, I was already consenting to do sexual
24 things with him.

25 So for his personal use, that -- it was

1 disheartening, but it wasn't cause for an immediate
2 breakup or something --

3 Q Okay.

4 A -- in my mind.

5 Q And during the time that these things were
6 going on, the Skype conversations, the conversation
7 with the other couple, that was when you guys were
8 still in a relationship together, right?

9 A Him and I?

10 Q Yes, you and -- and the --

11 A Benjamin and I, yeah, yes.

12 Q Okay. So it wasn't -- none of this
13 occurred post-divorce?

14 A No, this was early in the relationship.

15 Q Okay. You were also asked a few questions
16 about a 2015 conversation where he, the -- he, the
17 defendant, mentioned to you this idea of doxing some
18 pornography of you.

19 And you -- you said that you had learned
20 that this -- you already knew this was happening from
21 some individuals. Can you clarify what the -- what
22 the situation was?

23 A The situation was there were some people
24 that knew him that he had done some --

25 MR. TAYLOR: Objection.

1 THE WITNESS: Oh, sorry.

2 THE COURT: Just a second.

3 MS. ATWOOD: What's the nature of the
4 objection?

5 THE COURT: Overruled.

6 THE WITNESS: Could you --

7 THE COURT: You may continue.

8 THE WITNESS: -- repeat the question?

9 BY MS. ATWOOD:

10 Q Yeah. I'm just asking for a little more
11 detail about the -- the situation surrounding the
12 2015 conversation involving the doxing of the
13 pornography. You made mention that you already knew
14 that some individuals were aware of -- of -- of
15 videos being hidden on a website. What was that all
16 about?

17 A So there were some friends that I had had
18 that I told, you know, that these videos were hidden
19 on his website. I had recently seen that he had made
20 the website meaganvance.net and, you know, I'd -- I
21 opened up to them about it.

22 And, apparently, someone, you know, talked
23 to him about it and he construed that as people were
24 going to dox him and what it was that people had told
25 him -- these friends had told him that if he --

1 MR. TAYLOR: I'm going to object to
2 this, Judge. It's hearsay.

3 THE COURT: Overruled.

4 MS. ATWOOD: Thank you.

5 BY MS. ATWOOD:

6 Q Go ahead.

7 A -- that if he continued with this website
8 and posted things about me, that he did have a lot of
9 stuff on his website that they had had as well. I
10 wasn't okay with that, but I think that's enough
11 detail with that situation.

12 Q Okay. I'm just kind of going line by line
13 here. You were asked a few questions about the
14 e-mail that you received from the defendant with the
15 receipt from the xHamster website --

16 A Mm-hmm.

17 Q -- showing that he'd asked to have the
18 links removed. And you described that you -- you
19 could actually click the link that was sent to you on
20 your work address?

21 A I could click on it. I do not remember if
22 it said videos had been deleted or not. I -- I am
23 pretty certain that they were deleted videos, but
24 it -- it still had the title.

25 Q And did it take you to the website? It

1 took you to xHamster.com?

2 A Yeah.

3 Q So the next thing I want to ask you about
4 is the -- let's see here -- series of questions
5 regarding all the contact you were receiving in the
6 months leading up to this investigation beginning.

7 A Mm-hmm.

8 Q Defense counsel asked you numerous times
9 that there were no actual threats involved in those
10 e-mails that you were going through on the stand. Do
11 you remember that line of questioning?

12 A Yes.

13 Q I want to point your attention to an
14 exhibit that defense counsel went over with with you.
15 So I want to turn your attention back to this
16 exhibit. This was the one you were handed when asked
17 questions about the doxing conversation. Can you
18 review for me a few lines prior to that --

19 A Start right here?

20 Q -- portion on the conversation?

21 (Pause in proceedings, 4:07 p.m. -

22 4:08 p.m.)

23 THE WITNESS: Yes.

24 BY MS. ATWOOD:

25 Q So you -- you mentioned to defense counsel

1 that there was a conversation you recalled where the
2 defendant specifically mentioned wanting to seek
3 retribution against you. Was that that same
4 conversation?

5 A The same conversation as what?

6 Q The one that you just looked at.

7 A Yeah, it's right here.

8 Q Okay.

9 A Yeah.

10 Q I can take that back from you.

11 THE COURT: Did you offer that,
12 Ms. Atwood?

13 BY MS. ATWOOD:

14 Q And you also mentioned that during one of
15 the times that the defendant was text messaging you,
16 I believe, early in January, maybe, of 2016, making
17 suicidal statements --

18 A Yeah.

19 Q -- that he had also called you?

20 A He had called me, yeah.

21 Q You mentioned that during the phone call,
22 he did make something that amounted to a threat to
23 you. What was that?

24 A He had called me and then I guess he had
25 called me again because I didn't -- I hung up the

1 conversation. And it was a voicemail. I don't
2 remember what was exactly on the voicemail other
3 than, "You've ruined my life."

4 He was crying and that I had caused him to
5 be homeless. Beyond that, I don't remember what else
6 was in it, but it was just very clear he thinks I had
7 ruined his life. There was also some anger that I
8 hadn't responded to his phone calls further.

9 Q And the anger, were you getting that
10 through his statements or his tone or both or --

11 A His tone of -- of voice with the voicemail.
12 It started with, "Argh, why aren't you calling me
13 back?" or, you know, what -- something to that
14 extent.

15 Q Okay. So the last few things that you were
16 asked about had to do with whether or not the -- to
17 your knowledge, the defendant has disseminated these
18 videos to anyone that you know personally. You were
19 asked if he -- if he sent them to your family, your
20 friends or anything like that? And you said, "No,"
21 to your knowledge?

22 A Not to my knowledge.

23 Q But based on your own search of the
24 websites, these are publicly accessible?

25 A Yes.

1 Q Okay. And all anybody would've had to do
2 is Google your name?

3 A Yes, my name or "Albino Porn."

4 Q Okay. Let's talk about "albino porn." You
5 were also asked a few questions about the tag on
6 all these videos. When you searched for your name
7 initially --

8 A Mm-hmm.

9 Q -- did you, at some point, transition to
10 searching for the term "albino porn" to see what else
11 was out there?

12 A Yes.

13 Q And what did you find as far as the amount
14 of albino porn on the internet is concerned?

15 A There is one other person that is in
16 pornography that is albino that comes up when you
17 search "Albino Porn." So what I've seen is four
18 videos of us and one video of this other possible
19 porn star or something.

20 Q But other than that --

21 A So it's a very --

22 Q -- it's you?

23 A Other than that, it's me.

24 MS. ATWOOD: Those are all my questions.

25 Thank you.

1 THE COURT: Okay.

2 THE WITNESS: All right.

3 THE COURT: Ms. Vance, you may step
4 down. Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: Ms. Atwood, you may call
7 your next witness.

8 MS. ATWOOD: Yes, Your Honor. I'd like
9 to quickly call Micah Goldstein.

10 THE CLERK: If I could have you please
11 approach the witness stand and have you remain
12 standing and raise your right hand.

13 **MICAH GOLDSTEIN**

14 Was thereupon called as a witness on behalf of the
15 State; and, having been first duly sworn, was examined
16 and testified as follows:

17 THE CLERK: You may be seated.

18 And for the record, if I could have you
19 please state your name, spelling your first and last.

20 THE WITNESS: My name's Micah Goldstein;
21 M-i-c-a-h, G-o-l-d-s-t-e-i-n.

22 THE COURT: You may inquire, Ms. Atwood.

23 MS. ATWOOD: Thank you.

24 ////

25 ////

DIRECT EXAMINATION

BY MS. ATWOOD:

Q Good afternoon. I just have a couple of very quick questions for you. What is your relationship to Meagan Vance?

A I'm her boyfriend.

Q And were you her boyfriend during April, May 2015?

A Yes.

Q You've heard some testimony mentioned already about an in-person conversation between the defendant and Ms. Vance during April of 2015.

A Mm-hmm.

Q Do you recall that conversation? Do you have personal knowledge of that?

A Yeah, I was there. We were trying to get back some of her property with a -- a sheriff, who also witnessed the interaction.

And the -- the defendant tried to tell me that I should go look at this website he was making, that he was going to talk about her transgressions and -- and -- and -- and it was -- he was -- he was -- I think he was trying to put a wedge between us.

Q Okay. Did he tell you the name of the

1 website he had created?

2 A Yeah. Meaganvance.net, which I -- I did
3 Google and it exists, but there's no website there.

4 But it was registered in his name --

5 Q Mm-hmm.

6 A -- so it's, yeah, definitely him.

7 MS. ATWOOD: Those are all my questions.

8 Thank you.

9 THE COURT: Mr. Taylor.

10 CROSS-EXAMINATION

11 BY MR. TAYLOR:

12 Q Mr. Goldstein, so you're Ms. Vance --
13 Ms. Vance's boyfriend?

14 A Yes.

15 Q How long have you guys been dating?

16 A Over two years now.

17 Q So you probably are not a fan of
18 Mr. Barber?

19 A No.

20 Q Don't like him being around your lady?

21 A Well, he's not around her, so I'm -- yeah.
22 I wish he'd leave us alone, yeah.

23 Q I --

24 A I think that -- because that's what Meg
25 wants. I mean, if -- if she wanted contact with him,

1 that -- that would be her prerogative. But -- but
2 she's made it clear she doesn't.

3 Q So you weren't initially on any witness
4 list in this case, were you?

5 A No.

6 Q And you've sat in here and listened to this
7 whole trial?

8 A Yeah.

9 Q Sat there and watched Ms. Vance testify?

10 A Mm-hmm.

11 Q And you are now a witness testifying to the
12 same things, correct?

13 A Yeah.

14 Q All right. You talked about Mr. Barber
15 wanting to drive a wedge between you two?

16 A Mm-hmm.

17 Q Has he ever succeeded in doing that?

18 A No.

19 Q Never -- never any breaches?

20 A No, he's tried, but, no, he's not
21 succeeded.

22 Q To your knowledge?

23 A To my knowledge? No. He's not succeeded
24 actually driving a wedge between us.

25 MR. TAYLOR: All right. Those are all

1 my questions for you. Thank you.

2 THE COURT: Okay. Ms. Atwood, any
3 redirect?

4 MS. ATWOOD: Nothing further --

5 THE COURT: Okay.

6 MS. ATWOOD: -- of this witness.

7 THE COURT: Mr. Goldstein, you're free
8 to step down.

9 And is this witness excused?

10 MS. ATWOOD: Yes.

11 THE COURT: Okay. Any objection,
12 Mr. Taylor?

13 MR. TAYLOR: No, Judge.

14 THE COURT: Thank you.

15 You may call your next witness.

16 MS. ATWOOD: Next witness is Thomas
17 Duenas.

18 THE COURT: And we will be stopping at
19 5:00 today, just so everybody knows. Okay.

20 THE CLERK: If I could have you raise
21 your right hand.

22 **THOMAS DUENAS**

23 Was thereupon called as a witness on behalf of the
24 State, and, having been first duly sworn, was examined
25 and testified as follows:

1 THE CLERK: Thank you. You may be
2 seated.

3 If I could have you please state your
4 name for the record, spelling your first and last.

5 THE WITNESS: My name is Thomas Salas
6 (phonetic) Duenas. Duenas is spelled D-u-e-n-a-s;
7 Thomas, T-h-o-m-a-s.

8 MS. ATWOOD: May I inquire?

9 THE COURT: You may inquire, yes. Thank
10 you.

11 MS. ATWOOD: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. ATWOOD:

14 Q Good afternoon. Where do you work?

15 A I work at the Washington County Sheriff's
16 Office.

17 Q And what do you do there?

18 A I'm a deputy for the Washington County
19 Sheriff's Office.

20 Q How long have you been a sheriff's deputy?

21 A Approximately 13 years.

22 Q And generally speaking, what kind of
23 training and experience did you have to get to become
24 a deputy?

25 A Well, we have the State Academy. At -- at

1 that time, it was Monmouth. In 1995, I was actually
2 hired as a police officer in the Eugene Police
3 Department, so I had to attend their regional
4 academy. In addition to the State Academy and when I
5 got hired here in 2003, I had to attend their
6 in-house academy.

7 Q Okay. So do you have training in
8 conducting investigations and interviewing and things
9 like that?

10 A Yes.

11 Q Relating to criminal matters?

12 A Yes.

13 Q Did you conduct an investigation on June
14 22nd, 2016?

15 A Yes.

16 Q And during that investigation, did you
17 contact an individual named Meagan Vance?

18 A I did.

19 Q And what led you to contact her?

20 A She actually made a phone call into
21 dispatch in a -- about -- about a, at that time, it
22 was a Harassment call. It was coded as a Harassment
23 call.

24 Q And when you say, "Coded," what do you
25 mean?

1 A When the call came out on my screen, it --
2 it said, "Harassment," on it.

3 Q Okay.

4 A So it -- it basically, identifies the --
5 the title of the crime, as -- as -- as far as they
6 could tell.

7 Q Okay. Were you able to have a contact with
8 her over the phone.

9 A Yes.

10 Q Is that how you made contact? And based on
11 the conversation that you had with her, did you
12 conduct a further investigation into her statements?

13 A I did.

14 Q And during the course of that
15 investigation, what did you do?

16 A I went online and I was able to look at
17 certain websites, pornographic websites, that -- that
18 Ms. Vance said that she was on.

19 Q And when you say, "She was on," what do
20 you mean?

21 A That you could see that she was in the
22 video in a sexual act.

23 Q And where you aware of a potential suspect
24 of the investigation at that point?

25 A Yes.

1 Q Who was the suspect?

2 A She told me it was her -- her ex-husband,
3 Mr. Benjamin Barber.

4 Q Okay. So when you went forward with your
5 investigation online, what websites did you look at?

6 A Redtube, PornTube, TNAFlix, EmpFlix,
7 Pornhub, porn.com, everythingsextube.com [sic],
8 xHamster.com.

9 Q And did you select these websites in
10 reference to the ones she had listed to you? Is that
11 why you went to these places?

12 A Yes.

13 Q Okay. So when you went to these websites,
14 what did you find?

15 A That there were videos of Ms. Vance,
16 several -- four videos in particular, that were
17 scattered between all -- all those websites of her
18 and Mr. Barber engaging in sex.

19 Q Could you see her in an identifiable way in
20 the videos?

21 A Yes.

22 Q How were you able to identify her in
23 the videos?

24 A Well, in our initial contact -- my initial
25 contact with Ms. Vance was over the phone.

1 Q Yeah.

2 A So I did not know what she looked like
3 initially, so I had to access a DMV file to
4 get her -- to see what she looked like. And on that
5 and watching the video of that, I could determine
6 that that was the same person.

7 Q Okay. And the content of the videos
8 was sexual --

9 A Yeah.

10 Q -- in nature?

11 A Yes.

12 Q Were the individuals in the videos fully
13 nude?

14 A Yes.

15 Q What did you do to document what you
16 had found?

17 A We had downloaded the -- the videos that
18 we were able to download on a disk and took
19 screenshots of the sights that showed the -- the
20 videos that were displayed.

21 Q Okay. And did you save your documentation
22 onto CDs?

23 A Yes.

24 Q I am going to show you what I've marked as
25 State's Exhibit, I believe, 13 -- no, 14 and 15. Do

1 you recognize these exhibits?

2 A Yes, I do.

3 Q Are these this disks that you loaded your
4 findings onto as part of your investigation in
5 this case?

6 A Yes.

7 Q And are those, in fact, the original disks
8 that were entered into evidence?

9 A Yes.

10 MS. ATWOOD: Your Honor, we would offer
11 14 and 15.

12 MR. TAYLOR: No objection.

13 THE COURT: Thank you. They'll be
14 received.

15 (State's Exhibit Nos. 14-15 received.)

16 BY MS. ATWOOD:

17 Q So after you had collected and preserved
18 the evidence that you found online, did you try to
19 contact Mr. Barber?

20 A Yes, I did.

21 Q What did you do to try and make contact
22 with him?

23 A With a -- we tried -- we tried with the --
24 with the help of Ms. Vance trying to get him on the
25 phone or text him. And eventually, I tried to locate

1 him with databases available to me to his last
2 address. And eventually, it just came down to phone
3 call after phone call after phone call or of me
4 calling him.

5 Q Were you successful in calling him?

6 A Yes I was.

7 Q How -- how long did it take before you were
8 able to actually get ahold of him?

9 A Well, he actually called dispatch in
10 response to my phone calling. So he called back on
11 the 26th of June.

12 Q So that would've been --

13 A Four days.

14 Q -- four days after you had been trying to
15 contact him?

16 A I want to say I didn't try to contact him
17 'til the 23rd.

18 Q Okay. So three days of you trying to hunt
19 this guy down, basically?

20 A Correct.

21 Q Okay. So when he contacted dispatch, did
22 you personally speak with him?

23 A I spoke to him over the phone.

24 Q And did you ask him about the case you were
25 investigating?

1 A I did.

2 Q What did you ask him?

3 A Well, after I -- I identified who he was,
4 he asked me about this being a civil issue at first.
5 And I basically wanted to ask him if there was
6 agreement between him and Ms. Vance about posting
7 those videos online.

8 And he said that there was not an
9 agreement. And I also asked him why he would post
10 the videos. And he said that Ms. Vance accused him
11 of raping her and that she had ruined all of his
12 friend -- his relationships and friendships.

13 Q And did he talk to you at all about any
14 contact he had had with Meagan at that point?

15 A Well, he said he got an e-mail about a
16 digital copyright from her after he had posted the
17 videos.

18 Q And what else did he tell you about his
19 reasons for posting videos?

20 A He said he blamed her for being homeless
21 and that he -- he ended up losing everything because
22 that -- because that -- she had accused him of
23 raping -- he had -- she -- she accused him of raping
24 her.

25 Q And did you guys talk at all about when he

1 posted the videos?

2 A Yes. He -- he -- he said he posted the
3 videos either in February or March of 2016.

4 Q And what was the rest of your conversation
5 with him?

6 A I asked him if -- if he was aware that she
7 was a teacher and he said he was. And I asked
8 that -- if he put the videos out there knowing
9 that -- knowing that she was a teacher and he said,
10 "Yes."

11 I asked if he thought that the videos might
12 humiliate or embarrass her and then he commented that
13 they did a nude bike ride in Portland. I -- oh, I
14 asked him if there were only the four videos and he
15 told me that was, quote, "Correct," unquote.

16 Q Did you talk to him at all about whether or
17 not he had any profiles on the websites you'd looked
18 at?

19 A I asked him if there was an account name
20 that he used to post the videos. And he said, quote,
21 "Probably," unquote, use, quote, "BarberB," unquote.

22 Q So he told -- he identified to you BarberB
23 as being his account?

24 A Correct.

25 Q Okay. And did you talk to him at all about

1 how many sites he posted these on?

2 A I -- I told him that Ms. Vance gave me
3 about seven sites that -- that the videos were posted
4 on and that he told me he only put them on two or
5 three.

6 Q You mentioned that when you asked him at
7 first whether he thought these might humiliate or
8 embarrass her, he kind of avoided answering the
9 question. Did he make any further statements about
10 that?

11 A Yeah. He said that it -- it may be
12 embarrassing to her, but that he did not gain
13 anything when he posted the videos.

14 Q Did you talk to him at all about
15 potentially placing him under arrest?

16 A I did.

17 Q And what was that conversation like?

18 A Well, we were on the phone and he didn't
19 tell me where he was and he wasn't willing to meet
20 with me. He was rather upset and was afraid of
21 losing his job. And when he spoke to me on the 26th,
22 I believe that's a Sunday.

23 And so I -- I'm guessing that he works --
24 he's going to be working on Monday. So I -- I gave
25 him some time to -- to accumulate days and work

1 around his work schedule so that he could meet with
2 me and get arrested.

3 Q So you were trying to sort of be flexible
4 for his benefit?

5 A Correct. I didn't want -- I told him I
6 didn't want him to lose his job, saw that I was going
7 to -- I was going to try to be -- come on in. I --
8 we could do it on a -- on a weekend so that he comes
9 in on a weekend, that he could possibly get out by
10 Monday.

11 Q Okay. Did he make any other statements to
12 you that were different about his reasons for posting
13 the material?

14 A He -- he believed that the Constitution
15 protected his right to free speech and he believed
16 that this was a form of free speech.

17 Q Now, the conversation that you had with
18 him over the phone, you said, was on the 26th; is
19 that right?

20 A Correct.

21 Q When did you make personal contact with
22 him?

23 A July 17th.

24 Q Okay. And where was that contact?

25 A In front of our East Precinct at 3700

1 Southwest Murray Boulevard.

2 Q Okay. And just for the record, do you see
3 Benjamin Barber in the room today?

4 A I do.

5 Q Can you identify where he's seated and what
6 he's wearing?

7 A He's seated to the left of Mr. Taylor in
8 the middle of the table.

9 Q And what -- what is he wearing?

10 A It looks like a darker, long-sleeved shirt
11 with a green inner shirt and black pants, black
12 shoes.

13 MS. ATWOOD: Okay. Your Honor, let the
14 record reflect he's identified the defendant.

15 THE COURT: Okay. The record will so
16 reflect.

17 BY MS. ATWOOD:

18 Q So on the 26th when you -- sorry not the
19 26th -- the 17th, when you made personal contact with
20 the defendant, how did that contact go?

21 A He -- he was -- well, he -- he -- he met me
22 and he was pretty upset. So, you know, I gave him
23 some time to collect himself a little bit. I gave
24 him credit 'cause he came to meet me.

25 Q And did he talk to you at all about why he

1 was upset?

2 A Yeah. He said that he's been -- he's been
3 harassed by Mrs. Vance's lawyers for the past two
4 years and that every time he gets a job, that
5 Mrs. Vance and her associates, they bombard his work
6 online and he ends up losing his job.

7 Q At that point, did you place him under
8 arrest?

9 A I did.

10 Q And did the arrest process go smoothly?

11 A It did.

12 Q And what else did you talk to him about
13 after he was arrested?

14 A After he was arrested. I asked if he had
15 taken the videos off -- off the sites and he said
16 that he did and that also sent a -- Ms. Vance a
17 receipt that shows that he -- he had asked for the
18 videos to be pulled.

19 I asked him if he was sure he removed the
20 videos from all the sites. He said he took them off
21 the sites that he knew about.

22 Q Okay. Did you have any further contact
23 with the defendant or with Ms. Vance past that point?

24 A Not -- not personal contact. Actually, I
25 take that back. I -- I did see him one other time,

1 but it wasn't because of -- it wasn't -- it wasn't
2 in --

3 Q Not in furtherance of the investigation?

4 A Correct.

5 MS. ATWOOD: Okay. Those are all my
6 questions. Thank you.

7 THE COURT: Okay. Mr. Taylor, did you
8 wish to inquire of this witness?

9 MR. TAYLOR: Please.

10 THE COURT: Thank you.

11 CROSS-EXAMINATION

12 BY MR. TAYLOR:

13 Q Good afternoon, Deputy.

14 A Good afternoon, sir.

15 Q How you doing? If you'll give me just half
16 a second to get set up. I want to talk to you some
17 about your training and experience first. You talked
18 to Ms. Atwood, you've been a police officer, what,
19 about 13 years?

20 A With -- with Washington County, I've been
21 here 13 years. I was originally hired in 1995 by the
22 Eugene Police Department, so I had worked there from
23 1995. And then I came here in 2003 when I took a
24 position as a deputy.

25 Q What detail have you been working for the

1 last couple years?

2 A Patrol.

3 Q I see you around the courthouse all the
4 time.

5 A Yes, you do.

6 Q Do you also work security here in the
7 courthouse?

8 A Yes, I do, sir.

9 Q How is that split up?

10 A Court security's on a Monday and a Tuesday.
11 I work Wednesday, Thursday, Friday, Saturday, Sunday
12 on the road.

13 Q You work seven days a week?

14 A Sometimes.

15 Q All right. In all that training and
16 experience you talked to Ms. Atwood about, you took
17 classes at the police academy on investigation and
18 things like that?

19 A Yes.

20 Q I want to talk to you some about sort of
21 best policing practices, all right? So one of the
22 things you take classes on is report writing, right?

23 A Correct.

24 Q So you're a police officer. You go out on
25 all kinds of calls all the time, right?

1 A Yes.

2 Q Way too many to keep track of in your head?

3 A There's a lot, yeah. It's real hard to
4 keep track of them -- all of them.

5 Q And that's why you write a report, right?

6 A Yes.

7 Q Once you complete a call, sometime before
8 the end of your shift, you sit down at the computer
9 and write your report up, correct?

10 A Yes.

11 Q And you bring that report with you to
12 court?

13 A Yes.

14 Q And you refresh your memory from it?

15 A Yes.

16 Q And let's be fair. For example, in this
17 case, when you're testifying about statements
18 Mr. Barber made, that's verbatim from your report?

19 A Some of it is verbatim. Not right --
20 they're quoted, yes.

21 Q Right. And basically, when you've just
22 testified to all of Mr. Barber's statements, you
23 basically just read your report line for line?

24 A For the most part, yes.

25 Q All right. And, again, that's so you

1 can remember what happened because you can't possibly
2 remember all the details of every conversation you
3 have?

4 A Correct.

5 Q For example, four months ago, you and I had
6 a conversation about this case?

7 A We did?

8 Q Is that a question or a statement of fact?

9 A We did.

10 Q Do you remember the context of that --

11 A Actually --

12 Q -- the specifics of what --

13 A -- I do.

14 Q -- was said?

15 A You -- you approached me and asked me if
16 there was another Deputy Duenas that worked for the
17 Washington County. And I said, "No, there isn't."

18 Q There you go. All right. So let me --
19 I've -- I've suddenly lost myself in my notes. My
20 apologies. When you talked to Ms. Vance -- and we're
21 going to go kind of chronologically through --

22 A Sure.

23 Q -- what you've talked about. When you
24 talked to Ms. Vance, did she tell you how she found
25 these videos online?

1 A She looked for them herself.

2 Q Any more details than that?

3 A I -- I -- if I remember correctly, that --

4 MS. ATWOOD: Your Honor, I'm going to
5 object to this line of questioning. The questions
6 call for hearsay.

7 THE COURT: Sustained.

8 BY MR. TAYLOR:

9 Q You met with Ms. Vance in person on June
10 22nd, correct?

11 A Not in -- not June 22nd -- I did not meet
12 with her in person on June 22nd.

13 Q When did you meet her in person?

14 A I think it was the 24th that I met with her
15 in person.

16 Q Where was that at?

17 A 3700 Southwest Murray Boulevard, our East
18 Precinct. She --

19 Q Was she alone?

20 A -- came in. No, she was not.

21 Q Who was she with?

22 A She was with -- with a young man I think
23 she identified as her boyfriend.

24 Q Okay. Have you ever spoken to Ms. Vance's
25 attorney?

1 A Yes.

2 Q How many times?

3 A Once.

4 Q What was the nature of that conversation?

5 MS. ATWOOD: Objection, Your Honor.

6 Question calls for hearsay.

7 THE COURT: Sustained.

8 BY MR. TAYLOR:

9 Q You viewed a number of websites related to
10 this case, correct?

11 A Yes.

12 Q All right. Which websites did you go to?

13 A I went to porn.com, everysextube.com,
14 xhamster.com, Pornhub, PornTube, RedTube, EmpFlix,
15 TNAFlix.

16 Q On which of those websites did you find
17 videos related to this case?

18 A I found videos on -- excuse me -- PornTube.
19 I also found videos at TNAFlix and everysextube.com,
20 PornHub and Porn TV.

21 Q So on which ones did you not find videos?

22 A I -- I don't remember.

23 Q Are you familiar with pornographic
24 websites, Deputy?

25 A More so now than before, yes.

1 Q Have you ever received any training or
2 experience -- scratch the experience. Have you ever
3 received any training on pornographic websites and
4 investigations?

5 A No.

6 Q Have you ever received any training on
7 computer investigations?

8 A I have.

9 Q What was the nature of that training?

10 A Our certifications for our LEDS and
11 our databases.

12 Q So that involves using the Law Enforcement
13 Database System?

14 A Some of it, yes.

15 Q All right. So that's talking about looking
16 up warrants, looking up criminal history. That's
17 what LEDS does, right?

18 A Correct.

19 Q Have you received any training on forensic
20 computer investigation?

21 A No.

22 Q All right. So do you know what a -- a
23 mirror is?

24 A In regards to forensic computer, no.

25 Q All right. So do you know how to do

1 IP traces?

2 A No.

3 Q Do you know what an IP trace is?

4 A I've -- I think I do. It's when I -- I'm
5 able to backtrack where that computer was located or
6 the IP address of the computer, where that thing I'm
7 looking for came from.

8 Q The idea being that if you have some
9 internet posting or something like that, you could
10 trace the IP back and find out what computer it
11 actually came from?

12 A Yes.

13 Q All right. Did you do any IP tracing in
14 this case?

15 A No.

16 Q All right. Did you do any forensic
17 investigation to determine what, if any, of these
18 videos was actually linked to Mr. Barber?

19 A I did not.

20 Q All right. So no -- no search warrants, no
21 traces, no nothing like that?

22 A Correct.

23 Q Now, Mr. Barber later spoke to you about
24 those websites, correct?

25 A Yes.

1 Q His posting of the videos?

2 A Yes.

3 Q He told you he posted to two or three
4 websites?

5 A Yes.

6 Q He didn't mention these other ones that had
7 the content?

8 A Correct.

9 Q So are you aware of whether any of those
10 sites were mirrors of the other sites?

11 A I am not aware.

12 Q All right. Did you do any investigation to
13 look into whether either -- if any of those sites
14 pull content from other sites automatically?

15 A I did not.

16 Q So you wouldn't be able to say what, if
17 any, of these videos Mr. Barber actually posted
18 himself versus which were pulled off of a different
19 website by a bot or something like that?

20 A Correct.

21 Q So it's entirely possible that he could
22 have posted these videos on one website and then
23 they'd get automatically pulled to a bunch of
24 different other websites?

25 A Possible.

1 Q Are you aware of the frequency with which
2 that happens in internet pornography?

3 A Not personally. I -- I just know that I've
4 been told it has happened.

5 Q So it does occur?

6 A Yes.

7 Q You're aware of that? So on June, was it
8 23rd or 24th, that you attempted to set up a phone
9 call with Ms. Vance --

10 A 24th.

11 Q -- and Mr. Barber?

12 A 24th.

13 Q 24th. And what you were trying to do was
14 set up a pretext phone call, correct?

15 A Correct.

16 Q Pretext phone call is an investigative tool
17 that you've been trained on?

18 A Yes.

19 Q And in a pretext phone call, you would have
20 the complaining witness call the person they are
21 accusing and get them to try and admit to things on
22 the phone, right?

23 A Correct.

24 Q And you record those conversations?

25 A Yes.

1 Q So you know about recording conversations?

2 A Yes.

3 Q And that's some bang-up evidence right
4 there, right?

5 A Can be.

6 Q If it happens?

7 A Correct.

8 Q Hypothetically, you've got a recorded phone
9 call where a suspect admits to an entire crime?

10 A Yes.

11 Q All right. So you're aware of recording
12 interviews, phone calls, things like that?

13 A Yes.

14 Q In this case, you did not actually end up
15 recording any of these interviews or conversations
16 that you had?

17 A Correct.

18 Q All right. However, the technology does
19 exist at the Washington County Sheriff's Office to do
20 that?

21 A Yes.

22 Q It is done in many cases?

23 A Yes.

24 Q All right. So I want to kind of go back
25 to your conversations with Mr. Barber. Earlier, you

1 said that, yes, you more or less summarized those
2 conversations in your report?

3 A I -- some of it -- some of it is -- is
4 quoted -- his quotes, like what -- what he told me.

5 Q There -- there are brief quotations and
6 then large sections of paraphrasing?

7 A Correct.

8 Q All right. So obviously, your report and
9 the testimony that comes from it does not represent
10 the complete conversation?

11 A It -- correct.

12 Q All right. So -- I mean, just naturally,
13 there are parts that are going to get left out?

14 A Correct.

15 Q All right. So when you talked to
16 Mr. Barber, you talked about a number of things he
17 discussed in the past, right, things that happened in
18 the past between him and Ms. Vance?

19 A Correct.

20 Q And he was basically trying to explain
21 everything to you, right?

22 A Yes.

23 Q All right. So he kind of just goes off on
24 you and throws all this back story at you of their
25 whole, long history, right?

1 A Correct.

2 Q And you're kind of just catching what you
3 can and condensing it down into a report?

4 A Yes.

5 Q A lot to take in?

6 A Yes.

7 Q All right. So you'd agree, likely, some
8 details may have been missed?

9 A Yes.

10 Q All right. Did you think at any point to
11 record these interviews?

12 A No.

13 Q All right. I want to turn to some of the
14 specific discussions that were had. Mr. Barber first
15 talked to you about the idea of this being a civil
16 matter, correct?

17 A Yes.

18 Q He wasn't even aware that this was a crime?

19 A I -- I don't know.

20 Q He starts talking to you about civil
21 (indiscernible) money and something like that?

22 A I -- he just said it -- that -- he made
23 reference of it being a civil issue.

24 Q Is that all he had to say on the point or
25 is that just what your report includes?

1 A He asked if it was civil --

2 Q Mm-hmm.

3 A -- and --

4 Q -- no more details?

5 A No.

6 Q All right. You asked him about that --
7 whether there was any agreement about these videos
8 and he said that there was not any agreement?

9 A Correct.

10 Q Okay. And then you went in to the whole
11 asking him, "Why'd you do this?" And he sort of
12 throws that whole back story at you and the tortured
13 history of everything?

14 A Yes.

15 Q All right. He included a lot of talk about
16 his current circumstances?

17 A Yes.

18 Q All right. So, first off, presently, he
19 had a job. He was terrified of losing it?

20 A Yes.

21 Q He talked to you about the whole
22 homelessness thing, how he hadn't worked for a long
23 time, all that stuff?

24 A Yes.

25 Q Talked about his depression, thinking about

1 killing himself, all that stuff?

2 A I don't know if he told me that. I don't
3 remember that, if he -- if he told me that or not.

4 Q You don't recall?

5 A I don't recall.

6 Q Okay. He talked about losing a year of
7 his life, losing employment, ruined friendships, all
8 that stuff?

9 A Yes.

10 Q He told you that he was scared?

11 A He was scared of losing his job and going
12 back to what he -- going back to what he had been
13 doing.

14 Q And he also made a point to let you know
15 that he did not share these videos with any of her
16 friends?

17 A Yes.

18 Q Now, after you talked to Mr. Barber on
19 June 26th, you guys talked then over e-mail a bunch,
20 right?

21 A He sent me -- he sent me some e-mail. And
22 I -- I'm not sure. My -- my responses were -- were
23 about our meeting still, I think, if I'm -- I think
24 that's what it was. He -- he sent me a bunch of
25 e-mails and I sent him something about making sure

1 that we were meeting.

2 Q So you guys exchanged about eight to ten
3 e-mails. Does that sound about right to you?

4 A I don't remember.

5 Q All right. And the e-mails he sent you
6 were voluminous, correct?

7 A You know, I don't remember reading --
8 reading all of those e-mails.

9 Q So he was sending you stuff about the case
10 and you didn't read them?

11 A I -- I don't remember what he said on those
12 e-mails and I don't even know if they were duplicates
13 of what Ms. Vance had.

14 Q Did you even click the links that he sent
15 you?

16 A I did not click links that he sent me.

17 Q All right. So Mr. Barber is a suspect in
18 this case, sent you what sounds like a large e-mail
19 with a lot of links and stuff in it and it didn't
20 make it into your report and you didn't even click
21 the links?

22 A I did not click the links.

23 Q And it's never discussed anywhere in your
24 report, those conversations?

25 A Correct.

1 Q All right. So fair to say, your reports
2 that you're testifying from are missing some facts
3 about this case?

4 A They're missing that -- what were in the
5 links. That's what they're missing.

6 Q I mean, they don't even make reference of
7 any e-mails?

8 A The e-mails he sent me, I think, were after
9 the arrest. No, I take it back. The e-mails he sent
10 me were after our discussion on the 26th.

11 Q And the e-mails refer to him turning
12 himself in to you --

13 A Correct.

14 Q -- at a later date?

15 A Correct.

16 Q All right. So during the pendency of this
17 case, lots of e-mails. Nothing came of them?

18 A Yeah, I didn't read them.

19 Q All right.

20 A I'm sorry I didn't click on the links.

21 Q Were you interested in hearing Mr. Barber's
22 side of the story?

23 A I -- I was very interested in hearing his
24 side of the story. But I want to hear it from him,
25 from him, not from clicking this e-mail or that

1 e-mail.

2 Q So July 17th, he turns himself in to you,
3 right?

4 A Yes.

5 Q And, again, you guys have a conversation
6 out in the parking lot?

7 A Yes.

8 Q That conversation not recorded either?

9 A Correct.

10 Q But summarized in your police report?

11 A Yes.

12 Q All right. And he's talking about
13 Ms. Vance's lawyers chasing him around the last
14 couple years?

15 A Yes.

16 Q He's talking about losing jobs and things
17 like that?

18 A Yes.

19 Q Is that when you talked to him about
20 Ms. Vance's lawyer contacting you?

21 A I think I did say that -- that she called
22 me up.

23 Q And you guys talked some about the videos?

24 A Yes.

25 Q And he said that he removed all the ones

1 that he knew about?

2 A Yes.

3 Q And he had sent Ms. Vance proof of that,
4 right?

5 A Well, he said he sent her some kind
6 of receipt.

7 Q If you'll give me a minute to kind of look
8 over things. I think those are all my questions, but
9 let me just double check.

10 A Sure.

11 (Pause in proceedings, 4:47 p.m.)

12 BY MR. TAYLOR:

13 Q This last topic I want to touch in with you
14 real quick is this crime itself, Unlawful
15 Dissemination of an Intimate Image. Have you ever
16 heard of this crime before this case?

17 A Not -- not in those terms, no.

18 Q Had you ever investigated a case like
19 this before?

20 A No.

21 Q All right. At some point, you called
22 Ms. Atwood here for some clarification on the case --

23 A For --

24 Q -- on the crime; is that correct?

25 A Correct.

1 Q Make sure you understood it?

2 A Yes.

3 Q All right. 'Cause it is a brand new
4 charge?

5 A It's -- it's a new -- a fairly new law,
6 yes.

7 MR. TAYLOR: Those are all my questions.
8 Thank you, Deputy.

9 THE COURT: Okay. Ms. Atwood, do you
10 have brief questions?

11 MS. ATWOOD: I do.

12 THE COURT: Okay.

13 MS. ATWOOD: I think I can get through
14 these.

15 THE COURT: Great. Thank you.

16 REDIRECT EXAMINATION

17 BY MS. ATWOOD:

18 Q So I just want to ask you a couple of
19 follow-up questions. To start with, you were asked
20 some questions about your training relating to
21 computer investigations. And it's clear that you
22 aren't -- you don't have an extensive training in
23 computer forensics, right?

24 A Correct.

25 Q But do you use computers in your day-to-day

1 life?

2 A Yes.

3 Q How often?

4 A Every day.

5 Q So do you understand how to navigate

6 the internet --

7 A Yes.

8 Q -- find websites --

9 A Yeah.

10 Q -- download files --

11 A Yes.

12 Q -- things like that?

13 A Yes.

14 Q And those are the sort of things that you
15 were required to do during your investigation in this
16 case?

17 A Yes.

18 Q You were also asked whether or not you
19 conducted any extensive investigation trying to find
20 a way to associate these posts with the defendant.
21 And, specifically, defense counsel asked you about
22 this -- something called IP tracing. And that's not
23 something that you did in this case, right?

24 A Correct.

25 Q But when you got online and went to the

1 websites that had been listed to you, did you find
2 that the posts were associated with a particular user
3 name?

4 A Yes.

5 Q What was the user name?

6 A BarberB.

7 Q And was that the same user name that he
8 later admitted to you he had posted the videos on?

9 A Yes.

10 Q You were asked a couple of times about
11 whether or not you recorded your interviews with the
12 defendant. Is it common practice, in your
13 experience, to record every interview that you do?

14 A It is not.

15 Q And -- and why not?

16 A First of all, we are not issued recorders,
17 so we have to make a special effort to even get one.
18 I don't carry one around.

19 I'm not issued one. I have access to some
20 at certain precincts and I can utilize those. But I
21 actually have to make that special effort to -- to
22 get -- get that orchestrated.

23 Q Okay. And in this case, when you met with
24 the defendant, he was -- he -- he turned himself in.
25 He voluntarily met you, right?

1 A Yes, he did.

2 Q He was being cooperative?

3 A Yes, he did.

4 Q And during your conversation, he admitted
5 what he did?

6 A Yes.

7 Q And you included the facts of that
8 conversation in your reports as accurately as you
9 could, correct?

10 A Yes.

11 Q So you were asked a few questions about
12 the defendant's reaction to your questioning about
13 the investigation. And defense counsel asked you
14 whether he told you he was scared about losing his
15 job and whether he clarified to you that he'd never
16 sent these videos to her friends. And you said that
17 those are both accurate, right?

18 A Correct.

19 Q But didn't he also state to you -- and --
20 and for reference, this would be in the third full
21 paragraph of your second report. Didn't he say to
22 you that he posted these images because of the pain
23 and suffering that she'd caused him?

24 A Well, because he -- she accused him of
25 raping her and that he lost -- he ruined all the

1 friendships and he lost a year of his life or --

2 Q Okay. The last thing I want to ask you
3 about is the defendant's statements about removing
4 the videos. He did make a statement to you that he
5 had all the videos removed, right?

6 A The ones that he knew about.

7 Q And in -- in an effort to prove this to
8 you, he said that he had sent the victim, Meagan, a
9 receipt, right?

10 A Correct.

11 Q So he told you he had sent her one receipt,
12 but hadn't he already admitted to you at that point
13 that he'd posted the videos to at least two or three
14 sites?

15 A Yes.

16 Q And you, yourself, found them on more sites
17 than that even, right?

18 A Yes.

19 MS. ATWOOD: Those are all my questions.
20 Thank you.

21 THE COURT: Okay. And you may step
22 down. Thank you.

23 And is this witness excused?

24 MS. ATWOOD: Yes.

25 THE COURT: Any objection, Mr. Taylor?

1 MR. TAYLOR: No, Judge.

2 THE COURT: Okay. Great.

3 MS. ATWOOD: (Indiscernible.)

4 THE COURT: Okay. So we're going to go
5 ahead and break for the day. I'm just going to ask
6 that you're all back here at ten to 9:00 in the jury
7 room. And if you just want to go ahead and file in
8 there, Marcela will be in to give you some
9 last-minute instructions.

10 Again, remember that you're not to
11 discuss this case, not to do any independent research
12 on anything that you've heard here today. There's
13 nothing for you to consider unless and until you
14 are sent to deliberate, okay? Thank you.

15 A JUROR: (Indiscernible) return time?

16 THE COURT: Return time? 8:15.

17 (The following proceedings were held in
18 open court, out of the presence of the jury,
19 4:53 p.m.:)

20 THE COURT: Okay. So as far as
21 scheduling tomorrow, I believe we have an 8:30
22 sentencing and a 1:15 sentencing. You have one
23 witness left; is that correct?

24 MS. ATWOOD: Yes.

25 THE COURT: Okay. And, Mr. Taylor, you

1 intend to call your client --

2 MR. TAYLOR: I do --

3 THE COURT: -- is that correct?

4 MR. TAYLOR: -- Judge.

5 THE COURT: And how long do you think
6 that will take?

7 MR. TAYLOR: My direct? 45 minutes.

8 THE COURT: Okay. Again, I want to
9 remind the parties that nobody's going to be here
10 next week, so we need to make sure that we are moving
11 at a clip that we get this thing to the jury
12 tomorrow.

13 MS. ATWOOD: Yeah.

14 MR. TAYLOR: Understood, Judge.

15 THE COURT: All right. Thank you.

16 * * *

17 (Court adjourned, Volume 3, 11-9-16 at 4:54 p.m.)
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REPORTER'S CERTIFICATE

I, Katie Bradford, Court Reporter of the Circuit Court of the State of Oregon, Twentieth Judicial District, certify that I transcribed in stenotype from a digital audio recording the oral proceedings had upon the hearing of the above-entitled cause before the HONORABLE BETH L. ROBERTS, on **November XX, 2016**;

That I have subsequently caused my stenotype notes, so taken, to be reduced to computer-aided transcription under my direction; and that the foregoing transcript, **Volume 3 of 4, Pages 113 through 357**, both inclusive, constitutes a full, true and accurate record of said proceedings taken from a digital audio recording and so reported by me in stenotype as aforesaid.

Witness my hand and CSR Seal at Portland, Oregon, this 11th day of January, 2017.

Katie Bradford, CSR 90-0148
Court Reporter
CSR Expires: 9-30-17
(503) 267-5112